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Legislative History – Montana Session Law

Chapter: 498 Session L: 2021
Bill Number: SB 365

Checklist of Bill History

History and Final Status Sheet	☐
Introduced Bill	☐
Fiscal Note	☐
Third Reading Bill	☐
Final Version of Bill	☐

House	Senate
Committee: Judiciary	Committee: Judiciary
Hearing Date(s): 3/19/2021	Hearing Date(s): 2/27/2021
Committee Report: 4/14/2021	Committee Report: 2/27/2021

Conference Committee

Hearing Date(s):

Conference Committee Report:

Compiler Notes

Compiled by: JK Marshall

Date: 7/8/2024

Notes:

Bill Draft Number: LC1075
Bill Type - Number: SB 365
Short Title: Generally revise and reorganize driving under the influence laws
Primary Sponsor: Keith Regier (R) SD 3
Chapter Number: 498

Bill Actions - **Current Bill Progress:** Became Law

Bill Action Count: 47

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	05/12/2021			
(S) Signed by Governor	05/12/2021			
(S) Transmitted to Governor	05/04/2021			
(H) Signed by Speaker	05/04/2021			
(S) Signed by President	05/04/2021			
(C) Printed - Enrolled Version Available	04/26/2021			
(S) Returned from Enrolling	04/26/2021			
(S) Sent to Enrolling	04/21/2021			
(H) Returned to Senate	04/20/2021			
(H) 3rd Reading Concurred	04/20/2021	91	5	
(H) Scheduled for 3rd Reading	04/20/2021			
(H) 2nd Reading Concurred	04/15/2021	99	1	
(H) Scheduled for 2nd Reading	04/15/2021			
(H) Committee Report--Bill Concurred	04/14/2021			(H) Judiciary
(H) Committee Executive Action--Bill Concurred	04/14/2021	19	0	(H) Judiciary
(H) Hearing	03/19/2021			(H) Judiciary
(H) First Reading	03/08/2021			
(H) Referred to Committee	03/08/2021			(H) Judiciary
(S) Transmitted to House	03/02/2021			
(S) 3rd Reading Passed	03/02/2021	49	0	
(S) Fiscal Note Printed	03/02/2021			
(S) Scheduled for 3rd Reading	03/01/2021			
(S) 2nd Reading Passed	03/01/2021	50	0	
(S) Scheduled for 2nd Reading	03/01/2021			
(S) Committee Report--Bill Passed	03/01/2021			(S) Judiciary
(S) Committee Executive Action--Bill Passed	02/27/2021	11	0	(S) Judiciary
(S) Fiscal Note Received	02/27/2021			
(S) Hearing	02/27/2021			(S) Judiciary
(S) Referred to Committee	02/24/2021			(S) Judiciary
(S) First Reading	02/24/2021			
(C) Introduced Bill Text Available Electronically	02/24/2021			
(S) Fiscal Note Requested	02/24/2021			
(S) Introduced	02/23/2021			
(C) Draft Delivered to Requester	02/23/2021			
(C) Draft Ready for Delivery	02/23/2021			
(C) Executive Director Final Review	02/23/2021			

(C) Draft Ready for Delivery	02/23/2021
(C) Draft in Assembly	02/23/2021
(C) Executive Director Review	02/22/2021
(C) Bill Draft Text Available Electronically	02/22/2021
(C) Draft in Final Drafter Review	02/22/2021
(C) Draft in Input/Proofing	02/18/2021
(C) Draft to Drafter - Edit Review	02/16/2021
(C) Draft in Edit	02/13/2021
(C) Draft in Legal Review	02/12/2021
(C) Draft to Requester for Review	02/08/2021
(C) Draft Request Received	11/13/2020

Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name	Mi
Requester	Regier	Keith	
Drafter	Burkhardt	Julianne	
Primary Sponsor	Regier	Keith	

Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Alcohol and Drugs		Simple	ALC
Crimes		Simple	CR
Criminal Procedure (see also: Law Enforcement)		Simple	CRP
Motor Vehicles (see also: Taxation--Trans; Traffic Regulations; Transportation)		Simple	MTRV
Rule Making		Simple	RUL

Additional Bill Information

Fiscal Note Probable: Yes
Preintroduction Required: N
Session Law Ch. Number: 498
DEADLINE
Category: General Bills
Transmittal Date: 03/02/2021
Return (with 2nd house amendments) Date: 04/20/2021

Section Effective Dates

Section(s)	Effective Date	Date Qualified
All Sections	01-JAN-22	

SENATE BILL NO. 365

INTRODUCED BY K. REGIER

A BILL FOR AN ACT ENTITLED: “AN ACT GENERALLY REVISING LAWS REGARDING DRIVING UNDER THE INFLUENCE; PROVIDING DEFINITIONS; PROVIDING FOR DRIVING UNDER THE INFLUENCE CRIMES, TREATMENT REQUIREMENTS, A SOBRIETY MONITORING PROGRAM, FORFEITURE PROVISIONS, IMPLIED CONSENT AND ADMINISTRATIVE LICENSE SUSPENSION, APPEAL PROCESS, CONDITIONS OF ADMISSIBILITY, A PROCESS FOR ADMINISTRATION OF TESTS, CONDITIONS FOR RECEIVING A PROBATIONARY DRIVER'S LICENSE, OPEN CONTAINER VIOLATIONS, AND REVOCATION AND SUSPENSION OF LICENSE PROCEDURES; PROVIDING RULEMAKING AUTHORITY; PROVIDING PENALTIES; AMENDING SECTIONS 23-2-535, 44-4-1205, 45-5-106, 45-5-205, 45-5-207, 45-5-628, 46-16-130, 46-18-201, 46-18-236, 50-46-320, 53-9-103, 61-1-101, 61-2-107, 61-2-302, 61-5-205, 61-5-208, 61-5-212, 61-5-218, 61-5-231, 61-5-405, 61-8-101, 61-8-102, 61-8-805, 61-8-807, 61-11-101, AND 67-1-211, MCA; REPEALING SECTIONS 61-8-401, 61-8-402, 61-8-403, 61-8-404, 61-8-405, 61-8-406, 61-8-407, 61-8-408, 61-8-409, 61-8-410, 61-8-411, 61-8-421, 61-8-422, 61-8-440, 61-8-441, 61-8-442, 61-8-460, 61-8-461, 61-8-465, 61-8-714, 61-8-722, 61-8-731, 61-8-732, 61-8-733, 61-8-734, AND 61-8-741, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.”

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 17], unless the context requires otherwise and unless a different meaning plainly is required, the following definitions apply:

(1) "Aggravated driving under the influence" means a person is in violation of [section 2(1)(a), (1)(b), (1)(c), or (1)(d)] and:

(a) the person's alcohol concentration, as shown by analysis of the person's blood, breath, or other bodily substance, is 0.16 or more;

(b) the person is under the order of a court or the department to equip any motor vehicle the person operates with an approved ignition interlock device;

(c) the person's driver's license or privilege to drive is suspended, canceled, or revoked as a result of a prior violation of driving under the influence, including a violation of [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence, or a similar offense under previous laws of this state or the laws of another state; or

(d) the person refuses to give a breath sample as required in [section 8] and the person's driver's license or privilege to drive was suspended, canceled, or revoked under the provisions of an implied consent statute.

(2) "Alcoholic beverage" means a compound produced for human consumption as a drink that contains 0.5% or more of alcohol by volume.

(3) "Alcohol concentration" means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath, including as used in 16-6-305, 23-2-535, 45-5-207, 67-1-211, and this title.

(4) "Bus" means a motor vehicle with a manufacturer's rated seating capacity of 11 or more passengers, including the driver.

(5) "Camper" has the meaning provided in 61-1-101.

(6) "Commercial motor vehicle" has the meaning provided in 61-1-101.

(7) "Drug" means any substance that when taken into the human body can impair a person's ability to operate a vehicle safely. The term includes the meanings provided in 50-32-101(6), (7), and (14).

(8) "DUI court" means any court that has established a special docket for handling cases involving persons convicted under [section 3 or 4] and that implements a program of incentives and sanctions intended to assist a participant to complete treatment ordered pursuant to [section 5] and to end the participant's criminal behavior associated with the use of alcohol or drugs.

(9) "Highway" has the meaning provided in 61-1-101, including the shoulders of the highway.

(10) "Motor home" has the meaning provided in 61-1-101.

(11) "Motor vehicle" has the meaning provided in 61-1-101.

(12) "Open alcoholic beverage container" means a bottle, can, jar, or other receptacle that contains any amount of an alcoholic beverage and that is open or has a broken seal or the contents of which are partially removed.

(13) "Passenger area" means the area designed to seat the driver and passengers while a motor

vehicle is in operation and any area that is readily accessible to the driver or a passenger while the driver or a passenger is seated in the vehicle, including an unlocked glove compartment.

(14) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any combination of alcohol and drugs, a person's ability to safely operate a vehicle has been diminished.

(15) "Vehicle" has the meaning provided in 61-1-101, except that the term does not include a bicycle.

NEW SECTION. **Section 2. Driving under influence.** (1) A person commits the offense of driving under the influence if the person drives or is in actual physical control of:

(a) a vehicle or a commercial motor vehicle upon the ways of this state open to the public while under the influence of alcohol, any drug, or a combination of alcohol and any drug;

(b) a noncommercial vehicle upon the ways of this state open to the public while the person's alcohol concentration, as shown by analysis of the person's blood, breath, or other bodily substance, is 0.08 or more;

(c) a commercial motor vehicle within this state while the person's alcohol concentration, as shown by analysis of the person's blood, breath, or other bodily substance, is 0.04 or more;

(d) a noncommercial vehicle or commercial motor vehicle within this state while the person's delta-9-tetrahydrocannabinol level, excluding inactive metabolites, as shown by analysis of the person's blood or other bodily substance, is 5 ng/ml or more; or

(e) a vehicle within this state when the person is under 21 years of age at the time of the offense while the person's alcohol concentration, as shown by analysis of the person's blood, breath, or other bodily substance, is 0.02 or more.

(2) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the person at the time of a test, as shown by analysis of a sample of the person's blood, breath, or other bodily substance drawn or taken within a reasonable time after the alleged act, gives rise to the following inferences:

(a) if there was at that time an alcohol concentration of 0.04 or less, it may be inferred that the person was not under the influence of alcohol;

(b) if there was at that time an alcohol concentration in excess of 0.04 but less than 0.08, that fact

may not give rise to any inference that the person was or was not under the influence of alcohol, but the fact may be considered with other competent evidence in determining the guilt or innocence of the person; and

(c) if there was at that time an alcohol concentration of 0.08 or more, it may be inferred that the person was under the influence of alcohol. The inference is rebuttable.

(3) The provisions of subsection (2) do not limit the introduction of any other competent evidence bearing on the issue of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and drugs.

(4) Each municipality in this state is given authority to enact this section, with the word "state" changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and the imposition of the fines and penalties provided in the ordinance.

(5) Absolute liability, as provided in 45-2-104, is imposed for a violation of this section.

(6) When the same acts may establish the commission of an offense under subsection (1), a person charged with the conduct may be prosecuted for a violation of another relevant subsection under subsection (1). However, the person may be convicted of only one offense under this section or of a similar offense under previous laws of this state.

NEW SECTION. **Section 3. Penalty for driving under influence -- first through third offenses.** (1) (a) Except as provided in subsection (1)(b) or (1)(c), a person convicted of a violation of [section 2(1)(a)] shall be punished as follows:

(i) for a first violation, by imprisonment for not less than 24 consecutive hours or more than 6 months and by a fine of not less than $600 or more than $1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 48 consecutive hours or more than 1 year and by a fine of not less than $1,200 or more than $2,000;

(ii) for a second violation, by imprisonment for not less than 7 days or more than 1 year and by a fine of not less than $1,200 or more than $2,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 14 days or more than 1 year and a fine of not less than $2,400 or more than $4,000; or

(iii) for a third violation, by imprisonment for not less than 30 days or more than 1 year and by a fine of

not less than $2,500 or more than $5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 60 days or more than 1 year and by a fine of not less than $5,000 or more than $10,000.

(b) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in [section 4].

(c) If the person has a prior conviction or pending charge for a violation of driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], or a similar offense under previous laws of this state or the laws of another state that meets the definition of aggravated driving under the influence in [section 1], the person shall be punished as provided in subsection (4).

(d) The mandatory minimum imprisonment term may not be served under home arrest and may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the person's physical or mental well-being.

(e) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending the person's successful completion of a chemical dependency treatment program pursuant to [section 5]. During any suspended portion of sentence imposed by the court:

(i) the person is subject to all conditions of the suspended sentence imposed by the court, including mandatory participation in drug or DUI courts, if available;

(ii) the person is subject to all conditions of the 24/7 sobriety and drug monitoring program, if available and if imposed by the court; and

(iii) if the person violates any condition of the suspended sentence or any treatment requirement, the court may impose the remainder of any imprisonment term that was imposed and suspended.

(2) (a) Except as provided in subsection (2)(b) or (2)(c), a person convicted of a violation of [section 2(1)(b), (1)(c), or (1)(d)] shall be punished as follows:

(i) for a first violation, by imprisonment for not more than 6 months and by a fine of not less than $600 or more than $1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not more than 6 months and by a fine of not less than $1,200 or more than $2,000;

(ii) for a second violation, by imprisonment for not less than 5 days or more than 1 year and by a fine of

not less than $1,200 or more than $2,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 10 days or more than 1 year and by a fine of not less than $2,400 or more than $4,000; or

(iii) for a third violation, by imprisonment for not less than 30 days or more than 1 year and by a fine of not less than $2,500 or more than $5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 60 days or more than 1 year and by a fine of not less than $5,000 or more than $10,000.

(b) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in [section 4].

(c) If the person has a prior conviction or pending charge for a violation of driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], or a similar offense under previous laws of this state or the laws of another state that meets the definition of aggravated driving under the influence in [section 1], the person shall be punished as provided in subsection (4).

(d) The mandatory minimum imprisonment term may not be served under home arrest and may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the person's physical or mental well-being.

(e) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending the person's successful completion of a chemical dependency treatment program pursuant to [section 5]. During any suspended portion of sentence imposed by the court:

(i) the person is subject to all conditions of the suspended sentence imposed by the court, including mandatory participation in drug or DUI courts, if available;

(ii) the person is subject to all conditions of the 24/7 sobriety and drug monitoring program, if available and if imposed by the court; and

(iii) if the person violates any condition of the suspended sentence or any treatment requirement, the court may impose the remainder of any imprisonment term that was imposed and suspended.

(3) (a) A person convicted of a violation of [section 2(1)(e)] shall be punished as follows:

(i) Upon a first conviction under this section, a person shall be punished by a fine of not less than $100 or more than $500.

(ii) Upon a second conviction under this section, a person shall be punished by a fine of not less than $200 or more than $500 and, if the person is 18 years of age or older, by incarceration for not more than 10 days.

(iii) Upon a third or subsequent conviction under this section, a person shall be punished by a fine of not less than $300 or more than $500 and, if the person is 18 years of age or older, by incarceration for not less than 24 consecutive hours or more than 60 days.

(iv) In addition to the punishment provided in this section, regardless of disposition:

(A) the person shall comply with the chemical dependency education course and chemical dependency treatment provisions in [section 5] as ordered by the court; and

(B) the department shall suspend the person's driver's license for 90 days upon the first conviction, 6 months upon the second conviction, and 1 year upon the third or subsequent conviction. A restricted or probationary driver's license may not be issued during the suspension period until the person has paid a license reinstatement fee in accordance with 61-2-107 and, if the person was under the age of 18 at the time of the offense, has completed at least 30 days of the suspension period.

(b) A conviction under this section may not be counted as a prior offense or conviction under [sections 3, 4, and 7].

(4) (a) A person convicted of a violation under [section 2] charged as aggravated driving under the influence, as defined in [section 1], shall be punished as follows:

(i) for a first violation, by imprisonment for not less than 2 days or more than 1 year and by a fine of $1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 4 consecutive days or more than 1 year and by a fine of $2,000;

(ii) for a second violation, by imprisonment for not less than 15 days or more than 1 year and by a fine of $2,500, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 45 days or more than 1 year and by a fine of $5,000; or

(iii) for a third violation, by imprisonment for not less than 40 consecutive days or more than 1 year and by a fine of $5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time

of the offense, the person shall be punished by imprisonment for not less than 90 consecutive days or more than 1 year and by a fine of $10,000.

(b) The mandatory minimum imprisonment term may not be served under home arrest and may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the person's physical or mental well-being.

(c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending the person's successful completion of a chemical dependency treatment program pursuant to [section 5]. During any suspended portion of sentence imposed by the court:

(i) the person is subject to all conditions of the suspended sentence imposed by the court, including mandatory participation in drug or DUI courts, if available;

(ii) the person is subject to all conditions of the 24/7 sobriety and drug monitoring program, if available and if imposed by the court; and

(iii) if the person violates any condition of the suspended sentence or any treatment requirement, the court may impose the remainder of any imprisonment term that was imposed and suspended.

(d) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in [section 4].

(5) In addition to the punishment provided in this section, regardless of disposition, the person shall comply with the chemical dependency education course and chemical dependency treatment provisions in [section 5] as ordered by the court.

(6) A person punished pursuant to this section is subject to mandatory revocation or suspension of the person's driver's license as provided in chapter 5.

NEW SECTION. **Section 4. Penalty for driving under influence -- fourth and subsequent offenses.** (1) (a) A person convicted of a violation of driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, who has also been convicted under either 45-5-106 or any combination of three or more convictions under 45-5-104, 45-5-205, 45-5-628(1)(e), driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets

the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, and the offense under 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, any drug, or any combination of alcohol and any drug, as provided in [section 2(1)(a)], is guilty of a felony and shall be punished by:

(i) being sentenced to the department of corrections for a term of not less than 13 months or more than 2 years for placement in either an appropriate correctional facility or a program, followed by a consecutive term of 5 years to the Montana state prison or the Montana women's prison, all of which must be suspended, and a fine of not less than $5,000 or more than $10,000; or

(ii) being sentenced to a term of up to 5 years in an appropriate treatment court program, with required completion, and a fine of not less than $5,000 or more than $10,000. If sentenced under this alternative, the person may be entitled to a suspended sentence but is not eligible for a deferred imposition of sentence.

(b) Regarding the sentence provided for in subsection (1)(a)(i):

(i) the imposition or execution of the sentence may not be deferred or suspended, and the person is not eligible for parole;

(ii) the program in subsection (1)(a)(i) may be a residential alcohol treatment program approved by the department of corrections;

(iii) following initial placement of a defendant in a residential alcohol treatment program facility, the department of corrections may, at its discretion, place the offender in another facility or program;

(iv) the court shall order that if the person successfully completes a residential alcohol treatment program approved by the department of corrections, the remainder of the 13-month to 2-year term must be served on probation with the conditions that:

(A) the person abide by the standard conditions of probation promulgated by the department of corrections;

(B) a person who is financially able to pay the costs of imprisonment, probation, and alcohol treatment under this section does so;

(C) the person may not frequent an establishment where alcoholic beverages are served;

(D) the person may not consume alcoholic beverages;

(E) the person may not operate a motor vehicle unless authorized by the person's probation officer;

(F) the person enter in and remain in an aftercare treatment program for the entirety of the probationary period;

(G) the person submit to random or routine drug and alcohol testing; and

(H) if the person is permitted to operate a motor vehicle, the vehicle be equipped with an ignition interlock system; and

(v) the sentencing judge may impose on the defendant any other reasonable restrictions or conditions during the period of probation. Reasonable restrictions or conditions may include but are not limited to:

(A) payment of a fine as provided in 46-18-231;

(B) payment of costs as provided in 46-18-232 and 46-18-233;

(C) payment of costs of assigned counsel as provided in 46-8-113;

(D) community service;

(E) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of society; or

(F) any combination of the restrictions or conditions listed in subsections (1)(b)(v)(A) through (1)(b)(v)(E).

(2) A person convicted of a violation of driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, who was previously placed in a residential alcohol treatment program under subsection (1)(a)(i), whether or not the person successfully completed the program, and who has also been convicted under either 45-5-106 or any combination of four or more prior convictions under 45-5-104, 45-5-205, 45-5-628(1)(e), driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, and the offense under 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in [section 2(1)(a)], shall be punished by being sentenced to the department of corrections for a term of not less than 13 months or more than 5 years or being fined an amount of not less than $5,000 or more than $10,000, or both.

(3) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-1014, and 46-23-1031 apply to a person sentenced under this section.

(4) A person punished pursuant to this section is subject to mandatory revocation or suspension of the person's driver's license as provided in chapter 5.

NEW SECTION. **Section 5. Driving under influence -- assessment, education, and treatment required.** (1) In addition to the punishments provided in [sections 3 and 4], regardless of disposition, a defendant convicted of a violation of driving under the influence, including [section 2], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state shall complete a chemical dependency assessment and:

(a) for a first conviction, except as provided in subsection (8)(b), a chemical dependency education course; and

(b) for a second or subsequent conviction for a violation of driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, except a fourth or subsequent conviction for which the defendant completes a residential alcohol treatment program under [section 4(1)(a)(i)], or as required by subsection (8) of this section, chemical dependency treatment.

(2) The sentencing judge may, in the judge's discretion, require the defendant to complete the chemical dependency assessment prior to sentencing the defendant. If the assessment is not ordered or completed before sentencing, the judge shall order the chemical dependency assessment as part of the sentence.

(3) The chemical dependency assessment and the chemical dependency education course must be completed at a treatment program approved by the department of public health and human services and must be conducted by a licensed addiction counselor. Approved programs must be evidence-based programs. The defendant may attend a treatment program of the defendant's choice as long as the treatment services are provided by a licensed addiction counselor. The defendant shall pay the cost of the assessment, the education course, and chemical dependency treatment and may use health insurance to cover the costs when possible.

(4) The assessment must describe the defendant's level of addiction, if any, and contain a

recommendation as to education, treatment, or both. The assessment must conform to quality standards required by the department of public health and human services. A defendant who disagrees with the initial assessment may, at the defendant's cost, obtain a second assessment provided by a licensed addiction counselor or a program approved by the department of public health and human services.

(5) The treatment provided to the defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug problem, or both, as determined by a licensed addiction counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services. The rules must include evidence-based treatment programs or courses approved by the department that are likely to reduce recidivism. Upon determination, the court shall order the defendant's appropriate level of treatment. If more than one counselor makes a determination as provided in this subsection, the court shall order an appropriate level of treatment based on the determination of one of the counselors.

(6) Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a chemical dependency education course or treatment program. If the defendant fails to attend the course or treatment program, the counselor shall notify the court of the failure.

(7) A court or counselor may not require attendance at a self-help program other than at an open meeting, as that term is defined by the self-help program. A defendant may voluntarily participate in self-help programs.

(8) (a) Chemical dependency treatment must be ordered for a first-time or second-time offender convicted of a violation of driving under the influence, including [section 2], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, upon a finding of moderate or severe alcohol or drug use disorder made by a licensed addiction counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services.

(b) If treatment is ordered under subsection (8)(a) for a first-time offender, the offender may not also be required to attend a chemical dependency education course.

(9) (a) On a second or subsequent conviction, the treatment program provided for in subsection (5) must be followed by monthly monitoring for a period of at least 1 year from the date of admission to the

program.

(b) If a defendant fails to comply with the monitoring program imposed under subsection (9)(a), the court shall revoke the suspended sentence, if any, impose any remaining portion of the suspended sentence, and may include additional monthly monitoring for up to an additional 1 year.

(10) Notwithstanding 46-18-201(2), whenever a judge suspends a sentence imposed under [section 3] and orders the person to complete chemical dependency treatment under this section, the judge retains jurisdiction to impose any suspended sentence for up to 1 year.

NEW SECTION. **Section 6. Driving under influence -- ignition interlock device -- 24/7 sobriety and drug monitoring program.** (1) For a person convicted of a first offense of driving under the influence, driving under the influence, including [section 2], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under the laws of another state, in addition to the punishments listed in [section 3], the court may, regardless of disposition and if a probationary license is recommended by the court, require the person to comply with the conditions listed in subsection (2)(a) or (2)(b).

(2) On a second or subsequent conviction for a violation of driving under the influence, including [section 2], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under the laws of another state, or a second or subsequent conviction under 61-5-212 when the reason for the suspension or revocation was that the person was convicted of a violation of driving under the influence, including [section 2], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, or the suspension was under [section 8] or a similar law of another state for refusal to take a test for alcohol or drugs requested by a peace officer who believed that the person might be driving under the influence, in addition to the punishments listed in [section 2] and [section 3], the court shall require the person:

(a) to participate in the 24/7 sobriety and drug monitoring program provided for in 44-4-1203 or require the person to participate in a court-approved alcohol or drug detection testing program and to pay the fees associated with the program;

(b) if recommending that a probationary license be issued to the person, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device during the probationary period and

require the person to pay the reasonable cost of leasing, installing, and maintaining the device; or

(c) order that each motor vehicle owned by the person at the time of the offense be seized and subjected to the forfeiture procedure provided under [section 17].

(i) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(ii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

NEW SECTION. **Section 7. Driving under influence -- conviction defined -- place of imprisonment -- home arrest -- exceptions -- deferral of sentence not allowed.** (1) (a) For the purpose of determining the number of convictions for prior offenses referred to in [sections 1 through 4], "conviction" means:

(i) a final conviction, as defined in 45-2-101, in this state, in another state, or on a federally recognized Indian reservation;

(ii) a forfeiture, which has not been vacated, of bail or collateral deposited to secure the defendant's appearance in court in this state, in another state, or on a federally recognized Indian reservation; or

(iii) a conviction for a violation of driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, or a violation of a similar statute or regulation in another state or on a federally recognized Indian reservation.

(b) An offender is considered to have been previously convicted for the purposes of sentencing if less than 10 years have elapsed between the commission of the present offense and a previous conviction unless the offense is the offender's third or subsequent offense, in which case all previous convictions must be used

for sentencing purposes.

(c) A previous conviction for a violation of driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, or a violation of a similar statute or regulation in another state or on a federally recognized Indian reservation, and as otherwise defined in subsection (1)(a) may be counted for the purposes of determining the number of a subsequent conviction for a violation of driving under the influence under [section 2].

(d) A previous conviction for a violation of 45-5-104 for which the offense under 45-5-104 occurred while the person was operating a vehicle in violation of driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, and a previous conviction for a violation of 45-5-205 or 45-5-628(1)(e) may also be counted for the purposes of determining the number of a subsequent conviction for a violation of driving under the influence under [section 2].

(2) Except as provided in [section 4], the court may order that a term of imprisonment imposed under [section 3 or 4] be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and may require that the defendant follow the rules of the facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

(3) Subject to the limitations set forth in [section 3] concerning minimum periods of imprisonment, the court may order that a term of imprisonment imposed under [section 3] be served by imprisonment under home arrest, as provided in Title 46, chapter 18, part 10.

(4) A court may not defer imposition of sentence under [section 3 or 4].

(5) The provisions of 61-2-107, 61-5-205(2), and 61-5-208(2), relating to suspension of driver's licenses and later reinstatement of driving privileges, apply to any conviction under [section 3] for a violation of [section 2].

NEW SECTION. **Section 8. Implied consent -- blood or breath tests for alcohol, drugs, or both -- refusal to submit to test -- administrative license suspension.** (1) (a) A person who operates or is in actual physical control of a vehicle or commercial motor vehicle upon the ways of this state open to the public is considered to have given consent to a test or tests of the person's blood or breath for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body.

(b) The tests in subsection (1)(a) include but are not limited to a preliminary alcohol screening test of the person's breath for the purpose of estimating the person's alcohol concentration.

(c) A preliminary alcohol screening test may not be conducted or requested under this section unless both the peace officer and the instrument used to conduct the test have been certified by the department pursuant to rules adopted under the authority of [section 11(5)].

(d) The person's obligation to submit to a test in subsection (1)(a) is not satisfied by the person submitting to a preliminary alcohol screening test pursuant to this section.

(2) (a) The test or tests must be administered at the direction of a peace officer when:

(i) the peace officer has particularized suspicion to believe that the person has been driving or has been in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and the person has been detained for a violation of driving under the influence as provided in [section 2] or an offense that meets the definition of aggravated driving under the influence in [section 1];

(ii) the person is under the age of 21 and the peace officer has particularized suspicion to believe that the person has been driving or in actual physical control of a vehicle in violation of [section 2(1)(e)]; or

(iii) the peace officer has probable cause to believe that the person was driving or in actual physical control of a vehicle or commercial motor vehicle:

(A) in violation of driving under the influence, as provided in [section 2], and the person has been placed under arrest;

(B) in violation of driving under the influence as provided in [section 2], and the person has been involved in a motor vehicle crash or collision resulting in property damage;

(C) and the person has been involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in 45-2-101, or death; or

(D) in violation of driving under the influence as provided in [section 2] and meets the definition of aggravated driving under the influence in [section 1].

(b) A peace officer may designate which test or tests are administered.

(c) The peace officer shall inform the person of the right to refuse the test and that the refusal to submit to the test will result in the suspension for up to 1 year of that person's driver's license.

(d) A hearing as provided for in [section 9] must be available. The issues in the hearing must be limited to determining whether a peace officer had a particularized suspicion that the person was in violation of [section 2] or an offense meeting the definition of aggravated driving under the influence in [section 1], and whether the person refused to submit to the test.

(e) If a person refuses a preliminary alcohol screening test and another test during the same incident, the department may not consider each a separate refusal for purposes of suspension of the person's driver's license.

(3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent requested in subsection (1).

(4) (a) If an arrested person refuses to submit to one or more tests requested and designated by the peace officer, the refused test or tests may not be given unless the person has refused to provide a breath, blood, urine, or other bodily substance in a prior investigation in this state or under a substantially similar statute in another jurisdiction or the arrested person has a prior conviction or pending offense for a violation of 45-5-104, 45-5-106, 45-5-205, or driving under the influence, including [section 2], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or a similar statute in another jurisdiction.

(b) Upon the person's refusal to provide the breath, blood, urine, or other bodily substance requested by the peace officer pursuant to subsection (1) and this subsection (4) may apply for a search warrant to be issued pursuant to 46-5-224 to collect a sample of the person's blood for testing.

(c) (i) Upon the person's refusal to provide a breath, blood, urine, or other bodily substance, the peace officer shall, on behalf of the department, immediately seize the person's driver's license. The peace officer shall immediately forward the license to the department, along with a report certified under penalty of law stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing request and

confirming that the person refused to submit to one or more tests requested and designated by the peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in [section 16].

(ii) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of issuance, and shall provide the driver with written notice of the license suspension and the right to a hearing as provided in [section 9].

(iiii) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or more tests.

(5) This section does not apply to tests, samples, and analyses of blood or breath used for purposes of medical treatment or care of an injured motorist, related to a lawful seizure for a suspected violation of an offense not in this part, or performed pursuant to a search warrant.

(6) This section does not prohibit the release of information obtained from tests, samples, and analyses of blood or breath for law enforcement purposes as provided in 46-4-301 and [section 11(6)].

NEW SECTION. **Section 9. Right of appeal to court.** (1) Within 30 days after notice of the right to a hearing has been given by a peace officer, a person may file a petition to challenge the license suspension or revocation in the district court in the county where the arrest was made.

(2) The court has jurisdiction and shall set the matter for hearing. The court shall give at least 10 days' written notice of the hearing to the county attorney of the county where the arrest was made and to the city attorney if the incident leading to the suspension or revocation resulted in a charge filed in a city or municipal court. The county attorney or city attorney may represent the state. If the county attorney and the city attorney cannot agree on who will represent the state, the county attorney shall represent the state.

(3) Upon request of the petitioner, the court may order the department to return the seized license or issue a stay of the suspension or revocation action pending the hearing.

(4) The court shall take testimony, examine the facts of the case, and determine whether the petitioner is entitled to a license or whether the petitioner's license is subject to suspension or revocation based

on no other issues than:

(a) whether a peace officer had a basis for requesting a test or tests as set forth in [section 8], and

(b) whether the person refused to submit to one or more tests designated by the peace officer.

(5) This section does not grant a right of appeal to a state court if a driver's license is initially seized, suspended, or revoked pursuant to a tribal law or regulation that requires alcohol or drug testing of motor vehicle operators.

NEW SECTION. **Section 10. Evidence admissible -- conditions of admissibility.** (1) Upon the trial of a criminal action or other proceeding arising out of acts alleged to have been committed by a person in violation of driving under the influence, including [section 2], an offense that meets the definition of aggravated driving under the influence in [section 1], a similar offense under previous laws of this state or the laws of another state, or 61-8-805:

(a) evidence of any measured amount or detected presence of alcohol, drugs, or a combination of alcohol and drugs in the person at the time of a test, as shown by an analysis of the person's blood or breath, is admissible. A positive test result does not, in itself, prove that the person was under the influence of a drug or drugs at the time the person was in control of a vehicle. A person may not be convicted of a violation of [section 2(1)(a)] based on the presence of a drug or drugs in the person unless some other competent evidence exists that tends to establish that the person was under the influence of a drug or drugs while driving or in actual physical control of a motor vehicle within this state.

(b) a report of the facts and results of one or more tests of a person's blood or breath is admissible in evidence if:

(i) a breath test or preliminary alcohol screening test was performed by a person certified by the forensic sciences division of the department to administer the test; or

(ii) a blood sample was analyzed in a laboratory operated or certified by the department or in a laboratory exempt from certification under the rules of the department and the blood was withdrawn from the person by a person competent to do so under [section 11(1)]; and

(c) a report of the facts and results of a physical, psychomotor, or physiological assessment of a person is admissible in evidence if it was made by a person trained by the department or by a person who has

received training recognized by the department.

(2) If the person under arrest refused to submit to one or more tests under [section 8], whether or not a sample was subsequently collected for any purpose, proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a vehicle upon the ways of this state open to the public while under the influence of alcohol, drugs, or a combination of alcohol and drugs. The trier of fact may infer from the refusal that the person was under the influence. The inference is rebuttable.

(3) The provisions of this part do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and drugs.

NEW SECTION. **Section 11. Administration of tests.** (1) Only a licensed physician, registered nurse, or other qualified person acting under the supervision and direction of a physician or registered nurse may, at the request of a peace officer, withdraw blood for the purpose of determining any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person. This limitation does not apply to the sampling of breath.

(2) In addition to any test administered at the direction of a peace officer, a person may request that an independent blood sample be drawn by a physician or registered nurse for the purpose of determining any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person. The peace officer may not unreasonably impede the person's right to obtain an independent blood test. The peace officer may but has no duty to transport the person to a medical facility or otherwise assist the person in obtaining the test. The cost of an independent blood test is the sole responsibility of the person requesting the test. The failure or inability to obtain an independent test by a person does not preclude the admissibility in evidence of any test given at the direction of a peace officer.

(3) Upon the request of the person tested, full information concerning any test given at the direction of the peace officer must be made available to the person or the person's attorney.

(4) A physician, registered nurse, or other qualified person acting under the supervision and direction of a physician or registered nurse does not incur any civil or criminal liability as a result of the proper

administering of a blood test when requested in writing by a peace officer to administer a test.

(5) The department in cooperation with any appropriate agency shall adopt uniform rules for the giving of tests and may require certification of training to administer the tests as considered necessary.

(6) If a peace officer has probable cause to believe that a person has violated [section 2], meets the definition of aggravated driving under the influence as defined in [section 1], or has violated 61-8-805 and a sample of blood, breath, urine, or other bodily substance is taken from that person for any reason, a portion of that sample sufficient for analysis must be provided to a peace officer if requested for law enforcement purposes and upon issuance of a subpoena as provided in 46-4-301.

NEW SECTION. **Section 12. Ignition interlock device -- assisting in starting and operating -- circumventing -- penalty.** (1) It is unlawful for a person who is subject to a restriction under [section 6] to operate a vehicle that is not equipped with an ignition interlock device.

(2) A person may not knowingly assist a person who is restricted to the use of an ignition interlock device to start and operate the restricted person's vehicle.

(3) A person may not knowingly circumvent the operation of an ignition interlock device.

(4) A person convicted of a violation of this section shall be punished by a fine of not more than $500 or by imprisonment for not more than 6 months or both.

(5) This section does not apply if:

(a) the starting of a motor vehicle or the request to start a motor vehicle equipped with an ignition interlock device is done for the purpose of safety or mechanical repair of the device or the vehicle; and

(b) the person subject to the restriction does not operate the vehicle.

NEW SECTION. **Section 13. Department rules regarding ignition interlock devices -- ignition interlock device provider requirements.** (1) The department shall adopt rules providing for the approval of ignition interlock devices and the installation, calibration, repair, and removal of approved devices.

(2) The department's rules must be based on federal standards issued for similar devices.

(3) An ignition interlock device that is approved by the department must also:

(a) be designed so it does not impede safe operation of the vehicle;

(b) correlate well with the level established for alcohol impairment;

(c) work accurately and reliably in an unsupervised environment and under extreme weather conditions;

(d) require a deep lung breath sample or use an equally accurate measure of blood alcohol concentration equivalence;

(e) resist tampering and show evidence of tampering if it is attempted;

(f) be difficult to circumvent;

(g) minimize inconvenience of a sober user;

(h) operate reliably over the range of automobile environments and in connection with various manufacturing standards; and

(i) be manufactured by a person who is adequately insured for product liability.

(4) An ignition interlock device provider shall include in any lease agreement for an ignition interlock device a warning that a person who knowingly tampers with, circumvents, or otherwise misuses the device is subject to criminal prosecution.

NEW SECTION. **Section 14. Unlawful possession of open alcoholic beverage container in motor vehicle on highway.** (1) Except as provided in subsection (2), a person commits the offense of unlawful possession of an open alcoholic beverage container in or on a motor vehicle if the person knowingly possesses an open alcoholic beverage container within the passenger area of a motor vehicle on a highway.

(2) This section does not apply to an open alcoholic beverage container:

(a) in a locked glove compartment or storage compartment;

(b) in a motor vehicle trunk or luggage compartment or rack, or in a truck bed or cargo compartment;

(c) behind the last upright seat of a motor vehicle that is not equipped with a trunk;

(d) in a closed container in the area of a motor vehicle that is not equipped with a trunk and that is not normally occupied by the driver or a passenger; or

(e) in the immediate possession of a passenger:

(i) of a bus, taxi, or limousine that is used for the transportation of persons for compensation and that includes the provision of a hired driver; or

(ii) in the living quarters of a camper, travel trailer, or motor home.

(3) (a) A person convicted of the offense of unlawful possession of an open alcoholic beverage container in a motor vehicle shall be fined an amount not to exceed $100.

(b) A violation of this section is not a criminal offense within the meaning of 3-1-317, 3-1-318, 45-2-101, 46-18-236, 61-8-104, and 61-8-711 and may not be recorded or charged against a driver's record, and an insurance company may not hold a violation of this section against the insured or increase premiums because of the violation. The surcharges provided for in 3-1-317, 3-1-318, and 46-18-236 may not be imposed for a violation of this section.

NEW SECTION. **Section 15. Suspension of imprisonment sentence for DUI court participation.** (1) If a person participates in a DUI court, the court may, at the court's discretion, suspend all or a portion of an imprisonment sentence under [section 3], except for the mandatory minimum imprisonment term.

(2) If a person participating in a DUI court fails to comply with the conditions imposed by the DUI court, the court shall revoke the suspended imprisonment sentence and any sentence subsequently imposed must commence from the effective date of the revocation.

NEW SECTION. **Section 16. Mandatory suspension of license following certain implied consent action.** (1) The department shall suspend an individual's driver license if the department receives a report for an implied consent violation from law enforcement or another reporting jurisdiction that, pursuant to [section 8], an individual has refused a test or tests of the person's blood, breath, urine, or other bodily substance for determining any measured amount or detected presence of alcohol or drugs in the person's body.

(2) (a) Except as permitted by law, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended may not have the license or privilege renewed or restored until the revocation or suspension duration has been completed.

(b) The department shall apply the appropriate sanction to the driver based on the reported conviction and prior offenses.

(c) The driver shall pay all reinstatement and administrative fees owed to the department before a driver's license or privilege to drive is restored.

(d) The duration of the suspension commences from the date of violation.

(e) If a person refuses tests for the same incident, the department may not consider each a separate refusal for purposes of suspension.

(f) The department may not issue a probationary license during the suspension issued under this part.

(3) (a) A person who has an implied consent violation shall pay the department an administrative fee of $300, which must be deposited in the state special revenue account established pursuant to subsection (3)(b).

(b) There is a blood-draw search warrant processing account in the state special revenue fund established pursuant to 17-2-102(1)(b). Money provided to the department of justice pursuant to this subsection (3) must be deposited in the account and may be used only for providing forensic analysis of a driver's blood to determine the presence of alcohol or drugs.

(4) (a) Upon receiving a report of an implied consent violation, the department shall:

(i) for a first violation, suspend the driver's license or driving privilege for 6 months with no provision for a restricted probationary license; or

(ii) for a second or subsequent violation within 5 years of a previous refusal, as determined from the records of the department, suspend the driver's license or driving privilege for 1 year with no provision for a restricted probationary license.

(b) If a person who refuses to submit to one or more tests under this section is the holder of a commercial driver's license, in addition to any action taken against the driver's noncommercial driving privileges, the department shall:

(i) upon a first refusal, suspend the person's commercial driver's license for 1 year; and

(ii) upon a second or subsequent refusal, suspend the person's commercial driver's license for life, subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person is otherwise eligible, upon completion of a minimum suspension period of 10 years. If the person has a prior conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the conviction has the same effect as a previous testing refusal.

(5) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or

more tests.

(6) The department may recognize the seizure of a license of a tribal member by a peace officer acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department under this subsection is not reviewable under [section 9].

NEW SECTION. **Section 17. Forfeiture procedure.** (1) A motor vehicle forfeited under [section 6] must be seized by the arresting agency within 10 days after the conviction and disposed of as provided in Title 44, chapter 12, part 2. Except as provided in this section, the provisions of Title 44, chapter 12, part 2, apply to the extent applicable.

(2) Forfeiture proceedings under 44-12-207 through 44-12-211 must be instituted by the arresting agency within 20 days after the seizure of the motor vehicle.

(3) (a) For purposes of 44-12-213, the proceeds of the sale of the motor vehicle must be distributed first to the holders of security interests who have presented proper proof of their claims, up to the amount of the interests or the amount received from the sale, whichever is less, and the remainder to the general fund of the arresting agency.

(b) A holder of a security interest may petition the sentencing court for transfer of title to the motor vehicle to the holder of the security interest if the secured interest is equal to or greater than the estimated value of the motor vehicle.

(4) Actions the court may take under 44-12-212(3) to protect the rights of innocent persons include return of the motor vehicle without a sale to an owner who is unable to present an adequate defense under this section but is found by the court to be without fault.

Section 18. Section 23-2-535, MCA, is amended to read:

"**23-2-535. Alcohol concentration standards -- evidence admissible -- administration of tests.** (1) The inferences contained in ~~61-8-401(4)~~ [section 2] apply to any criminal action or proceeding arising out of

acts alleged to have been committed in violation of 23-2-523(2).

(2) Evidence of any measured amount or detected presence of alcohol in a person at the time of the act alleged, as shown by analysis of the person's blood, breath, or urine, and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(3) If a person charged with violation of 23-2-523(2) refuses to submit to a test of the person's blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol, none will be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(4) The provisions relating to administration of tests provided in ~~61-8-405~~ [section 11] and the definition of alcohol concentration provided in ~~61-8-407~~ [section 1] apply to any testing done to a person charged with violation of 23-2-523(2).

(5) As used in 23-2-523(2), the term "under the influence" has the meaning provided in ~~61-8-401(3)~~ [section 1]."

Section 19. Section 44-4-1205, MCA, is amended to read:

"**44-4-1205. Authority of court to order participation in sobriety and drug monitoring program -- probationary license -- imposition of conditions.** (1) (a) Any court or agency utilizing the sobriety program may stay any sanctions that it imposed against an offender while the offender is in compliance with the sobriety program.

(b) If an individual convicted of the offense of aggravated driving under the influence ~~in violation of 61-8-465~~ as defined in [section 1], a second or subsequent offense of driving under the influence in violation of ~~61-8-401~~ [section 2], or a second or subsequent offense of driving with excessive alcohol concentration in violation of ~~61-8-406~~ [section 2(1)(b), (1)(c), or (1)(d)] has been required to participate in the sobriety program, the court may, upon the individual's obtaining proof of insurance pursuant to 61-6-301, notify the department that as a participant in the sobriety program, the individual is eligible for a restricted probationary driver's license pursuant to 61-2-302, notwithstanding the requirements of 61-5-208 that an individual is required to complete a

certain portion of a suspension period before a probationary license may be issued.

(c) If the individual fails to comply with the requirements of the sobriety program, the court may notify the department of the individual's noncompliance and direct the department to withdraw the individual's probationary driver's license and reinstate the remainder of the suspension period provided in 61-5-208.

(2) Upon an offender's participation in the sobriety program and payment of the fees required by 44-4-1204:

(a) the court may condition any bond or pretrial release for an individual charged with ~~a violation of 61-8-465~~ aggravated driving under the influence as defined in [section 1], a second or subsequent violation of ~~61-8-401 or 61-8-406~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] or aggravated driving under the influence as defined in [section 1], or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime;

(b) the court may condition the granting of a suspended execution of sentence or probation for an individual convicted of ~~a violation of 61-8-465~~ aggravated driving under the influence as defined in [section 1], a second or subsequent violation of ~~61-8-401 or 61-8-406~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] or aggravated driving under the influence as defined in [section 1], or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime;

(c) the board of pardons and parole may condition parole for ~~a violation of 61-8-465~~ aggravated driving under the influence as defined in [section 1], a second or subsequent violation of ~~61-8-401 or 61-8-406~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] or aggravated driving under the influence as defined in [section 1], or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime; or

(d) the department of corrections may establish conditions for conditional release for a violation of ~~61-8-465~~ aggravated driving under the influence as defined in [section 1], a second or subsequent violation of ~~61-8-401 or 61-8-406~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] or aggravated driving under the influence as defined in [section 1], or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the

crime.

(3) An entity referred to in subsections (2)(a) through (2)(d) may condition any bond or pretrial release, suspended execution of sentence, probation, parole, or conditional release as provided in those subsections for an individual charged with or convicted of a violation of any statute involving domestic abuse or the abuse or neglect of a minor if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime regardless of whether the charge or conviction was for a first, second, or subsequent violation of the statute.

(4) A person is eligible to participate in and a court may compel a person to participate in a sobriety program if the person:

(a) is charged with ~~violating 61-8-465~~ aggravated driving under the influence as defined in [section 1]; or

(b) (i) is charged with or has been convicted of violating ~~61-8-401 or 61-8-406~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] or aggravated driving under the influence as defined in [section 1]; and

(ii) at any time in the 10 years preceding the date of the current charge or conviction:

(A) has been convicted in this state of a violation of ~~61-8-401, 61-8-406, or 61-8-465~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] or aggravated driving under the influence as defined in [section 1];

(B) has been convicted of a violation of a statute or regulation in another state or on a federally recognized Indian reservation that is similar to ~~61-8-401, 61-8-406, or 61-8-465~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] or aggravated driving under the influence as defined in [section 1]; or

(C) has forfeited bail or collateral deposited to secure the defendant's appearance in court in this state, in another state, or on a federally recognized Indian reservation for a charge of violating ~~61-8-401, 61-8-406, 61-8-465~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] or aggravated driving under the influence as defined in [section 1], or a similar statute or regulation and the forfeiture has not been vacated.

(5) As used in this section, "conviction" has the meaning provided in 45-2-101."

Section 20. Section 45-5-106, MCA, is amended to read:

"**45-5-106. Vehicular homicide while under influence.** (1) A person commits the offense of vehicular homicide while under the influence if the person negligently causes the death of another human being

while the person is operating a vehicle in violation of ~~61-8-401, 61-8-406, or 61-8-411~~ [section 2].

(2) Vehicular homicide while under the influence is not an included offense of deliberate homicide as described in 45-5-102(1)(b).

(3) A person convicted of vehicular homicide while under the influence shall be imprisoned in a state prison for a term not to exceed 30 years or be fined an amount not to exceed $50,000, or both. Imposition of a sentence may not be deferred."

Section 21. Section 45-5-205, MCA, is amended to read:

"**45-5-205. Negligent vehicular assault -- penalty.** (1) A person who negligently operates a vehicle, other than a bicycle as defined in 61-8-102, while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided for in ~~61-8-401(1)~~ [section 2], and who causes bodily injury to another commits the offense of negligent vehicular assault.

(2) Subject to subsection (3), a person convicted of the offense of negligent vehicular assault shall be fined an amount not to exceed $1,000 or incarcerated in a county jail for a term not to exceed 1 year, or both, and shall be ordered to pay restitution as provided in 46-18-241.

(3) A person convicted of the offense of negligent vehicular assault who caused serious bodily injury to another shall be fined an amount not to exceed $10,000 or incarcerated for a term not to exceed 10 years, or both, and shall be ordered to pay restitution as provided in 46-18-241.

(4) If a term of incarceration is imposed under subsection (2) or (3), the judge may suspend the term of incarceration upon the condition of payment of any fine imposed and of restitution. If the person does not pay the fine or restitution, the term of incarceration may be imposed."

Section 22. Section 45-5-207, MCA, is amended to read:

"**45-5-207. Criminal endangerment -- penalty.** (1) A person who knowingly engages in conduct that creates a substantial risk of death or serious bodily injury to another commits the offense of criminal endangerment. This conduct includes but is not limited to knowingly placing in a tree, log, or any other wood any steel, iron, ceramic, or other substance for the purpose of damaging a saw or other wood harvesting, processing, or manufacturing equipment.

(2) A high blood alcohol concentration, ~~as provided in 61-8-407,~~ alone is not sufficient to support a criminal endangerment charge.

(3) A person convicted of the offense of criminal endangerment shall be fined an amount not to exceed $50,000 or imprisoned in the state prison for a term not to exceed 10 years, or both.

(4) As used in this section, "alcohol concentration" has the meaning provided in [section 1]."

Section 23. Section 45-5-628, MCA, is amended to read:

"**45-5-628. Criminal child endangerment**. (1) A person commits the offense of criminal child endangerment if the person purposely, knowingly, or negligently causes substantial risk of death or serious bodily injury to a child under 14 years of age by:

(a) failing to seek reasonable medical care for a child suffering from an apparent acute life-threatening condition;

(b) placing a child in the physical custody of another who the person knows has previously purposely or knowingly caused bodily injury to a child;

(c) placing a child in the physical custody of another who the person knows has previously committed an offense against the child under 45-5-502 or 45-5-503;

(d) manufacturing or distributing dangerous drugs in a place where a child is present;

(e) operating a motor vehicle under the influence of alcohol or dangerous drugs in violation of ~~61-8-401, 61-8-406, 61-8-410, or 61-8-465~~ [section 2] or committing aggravated driving under the influence as defined in [section 1] with a child in the vehicle; or

(f) failing to attempt to provide proper nutrition for a child, resulting in a medical diagnosis of nonorganic failure to thrive.

(2) A person may not be charged under subsection (1)(b) or (1)(c) if the person placed the child in the other person's custody pursuant to a court order.

(3) A person convicted of the offense of criminal child endangerment shall be fined an amount not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(4) For purposes of this section, "nonorganic failure to thrive" means inadequate physical growth that is a result of insufficient nutrition and is not secondary to a diagnosed medical condition."

Section 24. Section 46-16-130, MCA, is amended to read:

"**46-16-130. Pretrial diversion.** (1) (a) Prior to the filing of a charge, the prosecutor and a defendant who has counsel or who has voluntarily waived counsel may agree to the deferral of a prosecution for a specified period of time based on one or more of the following conditions:

(i) that the defendant may not commit any offense;

(ii) that the defendant may not engage in specified activities, conduct, and associations bearing a relationship to the conduct upon which the charge against the defendant is based;

(iii) that the defendant shall participate in a supervised rehabilitation program, which may include treatment, counseling, training, or education;

(iv) that the defendant shall make restitution in a specified manner for harm or loss caused by the offense; or

(v) any other reasonable conditions.

(b) The agreement must be in writing, must be signed by the parties, and must state that the defendant waives the right to speedy trial for the period of deferral. The agreement may include stipulations concerning the admissibility of evidence, specified testimony, or dispositions if the deferral of the prosecution is terminated and there is a trial on the charge.

(c) The prosecution must be deferred for the period specified in the agreement unless there has been a violation of its terms.

(d) The agreement must be terminated and the prosecution automatically dismissed with prejudice upon expiration and compliance with the terms of the agreement.

(2) A condition of pretrial diversion may be for the court to refer a defendant for evaluation to determine the appropriateness of proceedings pursuant to Title 53, chapter 21.

(3) Except as provided in 46-1-1104 and 46-1-1204, after a charge has been filed, a deferral of prosecution may be entered into only after the prosecutor provides notice to the court.

(4) A prosecution for a violation of ~~61-8-401, 61-8-406, 61-8-410, 61-8-411, or 61-8-465~~ [section 2 or aggravated driving under the influence as defined in [section 1] may not be deferred."

Section 25. Section 46-18-201, MCA, is amended to read:

"**46-18-201. Sentences that may be imposed.** (1) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition of sentence, except as otherwise specifically provided by statute, for a period:

(i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

(ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

(3) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

(i) a fine as provided by law for the offense;

(ii) payment of costs, as provided in 46-18-232, or payment of costs of assigned counsel as provided in 46-8-113;

(iii) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a state prison to be designated by the department of corrections;

(iv) commitment of:

(A) an offender not referred to in subsection (3)(a)(iv)(B) to the department of corrections with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended, except as provided in 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), and 45-5-625(4); or

(B) a youth transferred to district court under 41-5-206 and found guilty in the district court of an

offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;

(v) chemical treatment of sexual offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person;

(vi) commitment of an offender to the department of corrections with the requirement that immediately subsequent to sentencing or disposition the offender is released to community supervision and that any subsequent violation must be addressed as provided in 46-23-1011 through 46-23-1015; or

(vii) any combination of subsection (2) and this subsection (3)(a).

(b) A court may permit a part or all of a fine to be satisfied by a donation of food to a food bank program.

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose on the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) may include but are not limited to:

(a) limited release during employment hours as provided in 46-18-701;

(b) incarceration in a detention center not exceeding 180 days;

(c) conditions for probation;

(d) payment of the costs of confinement;

(e) payment of a fine as provided in 46-18-231;

(f) payment of costs as provided in 46-18-232 and 46-18-233;

(g) payment of costs of assigned counsel as provided in 46-8-113;

(h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available and that the offender is a suitable candidate, an order that the offender be placed in a chemical dependency treatment program, prerelease center, or prerelease program for a period not to exceed 1 year;

(j) community service;

(k) home arrest as provided in Title 46, chapter 18, part 10;

(l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

(m) participation in a day reporting program provided for in 53-1-203;

(n) participation in the 24/7 sobriety and drug monitoring program provided for in Title 44, chapter 4, part 12, for a violation of ~~61-8-465~~ aggravated driving under the influence as defined in [section 1], a ~~second or subsequent~~ violation of ~~61-8-401, 61-8-406, or 61-8-411~~ [section 2], or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime or for a violation of any statute involving domestic abuse or the abuse or neglect of a minor if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime regardless of whether the charge or conviction was for a first, second, or subsequent violation of the statute;

(o) participation in a restorative justice program approved by court order and payment of a participation fee of up to $150 for program expenses if the program agrees to accept the offender;

(p) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society;

(q) with approval of the program and confirmation by the department of corrections that space is available, an order that the offender be placed in a residential treatment program; or

(r) any combination of the restrictions or conditions listed in this subsection (4).

(5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended.

(6) (a) Except as provided in subsection (6)(b), in addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension of the license or driving privilege of the person must be

accomplished as provided in 61-5-214 through 61-5-217.

(b) A person's license or driving privilege may not be suspended due to nonpayment of fines, costs, or restitution.

(7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(8) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise.

(9) When imposing a sentence under this section that includes incarceration in a detention facility or the state prison, as defined in 53-30-101, the court shall provide credit for time served by the offender before trial or sentencing.

(10) As used in this section, "dangerous drug" has the meaning provided in 50-32-101."

Section 26. Section 46-18-236, MCA, is amended to read:

"**46-18-236. (Temporary) Imposition of charge upon conviction or forfeiture -- administration.** (1) Except as provided in subsection (2), there must be imposed by all courts of original jurisdiction on a person upon conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail a charge that is in addition to other taxable court costs, fees, or fines, as follows:

(a) $15 for each misdemeanor charge;

(b) the greater of $20 or 10% of the fine levied for each felony charge; and

(c) an additional $50 for each misdemeanor and felony charge under Title 45~~, 61-8-401, 61-8-406, or 61-8-411~~ or [section 2].

(2) If a convicting court determines under 46-18-231 and 46-18-232 that the person is not able to pay the fine and costs or that the person is unable to pay within a reasonable time, the court shall waive payment of the charge imposed by this section.

(3) The charges imposed by this section are not fines and must be imposed in addition to any fine and may not be used in determining the jurisdiction of any court.

(4) When the payment of a fine is to be made in installments over a period of time, the charges

imposed by this section must be collected from the first payment made and each subsequent payment as necessary if the first payment is not sufficient to cover the charges.

(5) The charges collected under subsection (1), except those collected under subsections (1)(a) and (1)(b) by a justice's court, must be deposited with the appropriate local government finance officer or treasurer. If a city municipal court or city or town court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the city or town finance officer or treasurer. If a district court or justice's court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the county finance officer or treasurer. If the court of original jurisdiction is a court within a consolidated city-county government within the meaning of Title 7, chapter 3, the charges collected under subsection (1) must be deposited with the finance officer or treasurer of the consolidated government.

(6) (a) A city or town finance officer or treasurer may retain the charges collected under subsections (1)(a) and (1)(b) by a city municipal court or a city or town court and may use that money for the payment of salaries of the city or town attorney and deputies.

(b) Each county finance officer or treasurer may retain the charges collected under subsections (1)(a) and (1)(b) by district courts for crimes committed or alleged to have been committed within that county. The county finance officer or treasurer shall use the money for the payment of salaries of its deputy county attorneys and for the payment of other salaries in the office of the county attorney, and any funds not needed for those salaries may be used for the payment of any other county salaries.

(7) (a) Except as provided in subsection (7)(b), each county, city, or town finance officer or treasurer may retain the charges collected under subsection (1)(c) for payment of the expenses of a victim and witness advocate program, including a program operated by a private, nonprofit organization, that provides the services specified in Title 40, chapter 15, and Title 46, chapter 24, and that is operated or used by the county, city, or town.

(b) The appropriate county, city, or town finance officer or treasurer shall deposit $1 of each charge collected under subsection (1)(c) in the collecting court's fund for mitigation of administrative costs incurred by the court in the collection of the charge. The funds deposited under this subsection (7)(b) are not subject to allocation under 46-18-251.

(c) Except as provided in subsection (7)(b), if the county, city, or town does not operate or use a

victim and witness advocate program, all charges collected under subsection (1)(c) must be paid to the crime victims compensation and assistance program in the department of justice for deposit in the account provided for in 53-9-113. (Terminates June 30, 2021--sec. 27, Ch. 285, L. 2015; sec. 1, Ch. 292, L. 2015.)

46-18-236. (Effective July 1, 2021) Imposition of charge upon conviction or forfeiture -- administration. (1) Except as provided in subsection (2), there must be imposed by all courts of original jurisdiction on a person upon conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail a charge that is in addition to other taxable court costs, fees, or fines, as follows:

(a) $15 for each misdemeanor charge;

(b) the greater of $20 or 10% of the fine levied for each felony charge; and

(c) an additional $50 for each misdemeanor and felony charge under Title 45~~, 61-8-401, 61-8-406, or 61-8-411~~ or [section 2].

(2) If a convicting court determines under 46-18-231 and 46-18-232 that the person is not able to pay the fine and costs or that the person is unable to pay within a reasonable time, the court shall waive payment of the charge imposed by this section.

(3) The charges imposed by this section are not fines and must be imposed in addition to any fine and may not be used in determining the jurisdiction of any court.

(4) When the payment of a fine is to be made in installments over a period of time, the charges imposed by this section must be collected from the first payment made and each subsequent payment as necessary if the first payment is not sufficient to cover the charges.

(5) The charges collected under subsection (1), except those collected under subsections (1)(a) and (1)(b) by a justice's court, must be deposited with the appropriate local government finance officer or treasurer. If a city municipal court or city or town court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the city or town finance officer or treasurer. If a district court or justice's court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the county finance officer or treasurer. If the court of original jurisdiction is a court within a consolidated city-county government within the meaning of Title 7, chapter 3, the charges collected under subsection (1) must be deposited with the finance officer or treasurer of the consolidated government.

(6) (a) A city or town finance officer or treasurer may retain the charges collected under subsections

(1)(a) and (1)(b) by a city municipal court or a city or town court and may use that money for the payment of salaries of the city or town attorney and deputies.

(b) Each county finance officer or treasurer may retain the charges collected under subsections (1)(a) and (1)(b) by district courts for crimes committed or alleged to have been committed within that county. The county finance officer or treasurer shall use the money for the payment of salaries of its deputy county attorneys and for the payment of other salaries in the office of the county attorney, and any funds not needed for those salaries may be used for the payment of any other county salaries.

(7) (a) Except as provided in subsection (7)(b), each county, city, or town finance officer or treasurer may retain the charges collected under subsection (1)(c) for payment of the expenses of a victim and witness advocate program, including a program operated by a private, nonprofit organization, that provides the services specified in Title 40, chapter 15, and Title 46, chapter 24, and that is operated or used by the county, city, or town.

(b) The appropriate county, city, or town finance officer or treasurer shall deposit $1 of each charge collected under subsection (1)(c) in the collecting court's fund for mitigation of administrative costs incurred by the court in the collection of the charge. The funds deposited under this subsection (7)(b) are not subject to allocation under 46-18-251.

(c) Except as provided in subsection (7)(b), if the county, city, or town does not operate or use a victim and witness advocate program, all charges collected under subsection (1)(c) must be paid to the crime victims compensation and assistance program in the department of justice for deposit in the state general fund to be used to provide services to crime victims as provided in Title 53, chapter 9, part 1."

Section 27. Section 50-46-320, MCA, is amended to read:

"**50-46-320. Limitations of act.** (1) This part does not permit:

(a) any individual, including a registered cardholder, to operate, navigate, or be in actual physical control of a motor vehicle, aircraft, or motorboat while under the influence of marijuana; or

(b) except as provided in subsection (3), the use of marijuana by a registered cardholder:

(i) in a health care facility as defined in 50-5-101;

(ii) in a school or a postsecondary school as defined in 20-5-402;

(iii) on or in any property owned by a school district or a postsecondary school;

(iv) on or in any property leased by a school district or a postsecondary school when the property is being used for school-related purposes;

(v) in a school bus or other form of public transportation;

(vi) when ordered by any court of competent jurisdiction into a correctional facility or program;

(vii) if a court has imposed restrictions on the cardholder's use pursuant to 46-18-202;

(viii) at a public park, public beach, public recreation center, or youth center;

(ix) in or on the property of any church, synagogue, or other place of worship;

(x) in plain view of or in a place open to the general public; or

(xi) where exposure to the marijuana smoke significantly adversely affects the health, safety, or welfare of children.

(2) A registered cardholder, provider, or marijuana-infused products provider may not cultivate marijuana or manufacture marijuana concentrates or marijuana-infused products for use by a registered cardholder in a manner that is visible from the street or other public area.

(3) A hospice or residential care facility licensed under Title 50, chapter 5, may adopt a policy that allows use of marijuana by a registered cardholder.

(4) Nothing in this part may be construed to require:

(a) a government medical assistance program, a group benefit plan that is covered by the provisions of Title 2, chapter 18, an insurer covered by the provisions of Title 33, or an insurer as defined in 39-71-116 to reimburse an individual for costs associated with the use of marijuana by a registered cardholder;

(b) an employer to accommodate the use of marijuana by a registered cardholder;

(c) a school or postsecondary school to allow a registered cardholder to participate in extracurricular activities; or

(d) a property owner to allow a tenant who is a registered cardholder, provider, marijuana-infused products provider, dispensary, or testing laboratory to cultivate, manufacture, dispense, sell, or test marijuana, marijuana concentrates, or marijuana-infused products or to allow a registered cardholder to use marijuana.

(5) Nothing in this part may be construed to:

(a) prohibit an employer from including in any contract a provision prohibiting the use of marijuana for

a debilitating medical condition; or

(b) permit a cause of action against an employer for wrongful discharge pursuant to 39-2-904 or discrimination pursuant to 49-1-102.

(6) Nothing in this part may be construed to allow a provider, marijuana-infused products provider, or employee of a licensee to use marijuana or to prevent criminal prosecution of a provider, marijuana-infused products provider, or employee of a licensee who uses marijuana or paraphernalia for personal use.

(7) (a) A law enforcement officer who has reasonable cause to believe that an individual with a valid registry identification card is driving under the influence of marijuana may apply for a search warrant to require the individual to provide a sample of the individual's blood for testing pursuant to the provisions of ~~61-8-405~~ [section 11]. An individual with a delta-9-tetrahydrocannabinol level of 5 ng/ml may be charged with a violation of ~~61-8-401or 61-8-411~~ [section 2(1)(a) or (1)(e)].

(b) A registered cardholder, provider, or marijuana-infused products provider who violates subsection (1)(a) is subject to revocation of the individual's registry identification card or license if the individual is convicted of or pleads guilty to any offense related to driving under the influence of alcohol or drugs when the initial offense with which the individual was charged was a violation of ~~61-8-401, 61-8-406, 61-8-410, or 61-8-411~~ [section 2]. A revocation under this section must be for the period of suspension or revocation set forth:

(i) in 61-5-208 for a violation of ~~61-8-401, 61-8-406, or 61-8-411~~ [section 2(1)(a), (1)(b), (1)(c), or (1)(d)]; or

(ii) in ~~61-8-410~~ [section 3(3)] for a violation of ~~61-8-410~~ [section 2(1)(e)].

(c) If an individual's registry identification card or license is subject to renewal during the revocation period, the individual may not renew the card until the full revocation period has elapsed. The card or license may be renewed only if the individual submits all materials required for renewal.

(8) A provider or marijuana-infused products provider who violates 15-64-103 or 15-64-104 is subject to revocation of the person's license from the date of the violation until a period of up to 1 year after the department of revenue certifies compliance with 15-64-103 or 15-64-104."

Section 28. Section 53-9-103, MCA, is amended to read:

"**53-9-103. Definitions.** As used in this part, the following definitions apply:

(1) "Claimant" means any of the following claiming compensation under this part:

(a) a victim;

(b) a dependent of a deceased victim; or

(c) an authorized person acting on behalf of any of them.

(2) "Collateral source" means a source of benefits, other than welfare benefits, or advantages for economic loss otherwise compensable under this part that the claimant has received or that is readily available to the claimant from:

(a) the offender;

(b) the government of the United States or any agency thereof, a state or any of its political subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them excess or secondary to benefits under this part;

(c) social security, medicare, and medicaid;

(d) workers' compensation;

(e) wage continuation programs of any employer;

(f) proceeds of a contract of insurance payable to the claimant for loss that was sustained because of the criminally injurious conduct;

(g) a contract, including an insurance contract, providing hospital and other health care services or benefits for disability. A contract in this state may not provide that benefits under this part are a substitute for benefits under the contract or that the contract is a secondary source of benefits and benefits under this part are a primary source.

(h) a crime victims compensation program operated by the state in which the victim was injured or killed that compensates residents of this state injured or killed in that state; or

(i) any other third party.

(3) "Criminally injurious conduct" means conduct that:

(a) occurs or is attempted in this state or an act of international terrorism, as defined in 18 U.S.C. 2331, committed outside of the United States against a resident of this state;

(b) results in bodily injury or death or involves domestic violence in a home where minor children were present; and

(c) is punishable by fine, imprisonment, or death or would be so punishable except that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state; however, criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle unless the bodily injury or death occurred during the commission of an offense defined in Title 45 that requires the mental state of purposely as an element of the offense or the injury or death was inflicted by the driver of a motor vehicle who is found by the office, by a preponderance of the evidence, to have been operating the motor vehicle while under the influence, as that term is defined in ~~61-8-401~~ [section 1]; or

(d) is committed in a state without a crime victims compensation program that covers a resident of this state if the conduct meets the requirements in subsections (3)(b) and (3)(c).

(4) "Dependent" means a natural person who is recognized under the law of this state to be wholly or partially dependent upon the victim for care or support and includes a child of the victim conceived before the victim's death but born after the victim's death, including a child that is conceived as a result of the criminally injurious conduct.

(5) "Office" means the office of victims services established in 2-15-2016.

(6) "Victim" means:

(a) a person who suffers bodily injury or death as a result of:

(i) criminally injurious conduct;

(ii) the person's good faith effort to prevent criminally injurious conduct; or

(iii) the person's good faith effort to apprehend a person reasonably suspected of engaging in criminally injurious conduct; or

(b) a minor child present in a home where domestic violence occurred."

Section 29. Section 61-1-101, MCA, is amended to read:

"**61-1-101. Definitions.** As used in this title, unless the context indicates otherwise, the following definitions apply:

(1) (a) "Authorized agent" means a person who has executed a written agreement with the department and is specifically authorized by the department to electronically access and update the department's motor vehicle titling, registration, or driver records, using an approved automated interface, for

specific functions or purposes on behalf of a third party.

(b) For purposes of this subsection (1), "person" means an individual, corporation, partnership, limited partnership, limited liability company, association, joint venture, state agency, local government unit, another state government, the United States, a political subdivision of this or another state, or any other legal or commercial entity.

(2) "Authorized agent agreement" means the written agreement executed between an authorized agent and the department that sets the technical and operational program standards, compliance criteria, payment options, and service expectations by which the authorized agent is required to operate in performing specific motor vehicle or driver-related record functions.

(3) "Autocycle" means a three-wheeled motorcycle that is equipped with safety belts, roll bars or roll hoops, a steering wheel, and seating that does not require the operator to straddle or sit astride it.

(4) "Bus" means a motor vehicle designed for carrying more than 10 passengers and used for the transportation of persons and any other motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(5) (a) "Business entity" means a corporation, association, partnership, limited liability partnership, limited liability company, or other legal entity recognized under state law.

(b) The term does not include an individual.

(6) (a) "Camper" means a structure designed to be mounted in the cargo area of a truck or attached to an incomplete vehicle for the purpose of providing shelter for persons. The term includes but is not limited to a cab-over, half cab-over, noncab-over, telescopic, and telescopic cab-over.

(b) The term does not include a truck canopy cover or topper.

(7) "CDLIS driver record" means the electronic record of a person's commercial driver's license status and history stored as part of the commercial driver's license system established under 49 U.S.C. 31309.

(8) "Certificate of title" means the paper record issued by the department or by the appropriate agency of another jurisdiction that establishes a verifiable record of ownership between an identified person or persons and the motor vehicle specifically described in the record and that provides notice of a perfected security interest in the motor vehicle.

(9) "Commercial driver's license" means:

(a) a driver's license issued under or granted by the laws of this state that authorizes a person to operate a class of commercial motor vehicle; or

(b) the privilege of a person to drive a commercial motor vehicle, whether or not the person holds a valid commercial driver's license.

(10) (a) "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:

(i) has a gross combination weight rating or a gross combination weight of 26,001 pounds or more, whichever is greater, inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;

(ii) has a gross vehicle weight rating or a gross vehicle weight of 26,001 pounds or more, whichever is greater;

(iii) is designed to transport at least 16 passengers, including the driver;

(iv) is a school bus; or

(v) is of any size and is used in the transportation of hazardous materials.

(b) The following vehicles are not commercial motor vehicles:

(i) an authorized emergency vehicle:

(A) equipped with audible and visual signals as required under 61-9-401 and 61-9-402; and

(B) operated when responding to or returning from an emergency call or operated in another official capacity;

(ii) a vehicle:

(A) controlled and operated by a farmer, family member of the farmer, or person employed by the farmer;

(B) used to transport farm products, farm machinery, or farm supplies to or from the farm within Montana within 150 miles of the farm or, if there is a reciprocity agreement with a state adjoining Montana, within 150 miles of the farm, including any area within that perimeter that is in the adjoining state; and

(C) not used to transport goods for compensation or for hire; or

(iii) a vehicle operated for military purposes by active duty military personnel, a member of the military reserves, a member of the national guard on active duty, including personnel on full-time national guard duty, personnel in part-time national guard training, and national guard military technicians, or active duty United

States coast guard personnel.

(c) For purposes of this subsection (10):

(i) "farmer" means a person who operates a farm or who is directly involved in the cultivation of land or crops or the raising of livestock owned by or under the direct control of that person;

(ii) "gross combination weight rating" means the value specified by the manufacturer as the loaded weight of a combination or articulated vehicle;

(iii) "gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of a single vehicle; and

(iv) "school bus" has the meaning provided in 49 CFR 383.5.

(11) "Commission" means the state transportation commission.

(12) "Custom-built motorcycle" means a motorcycle that is equipped with:

(a) an engine that was manufactured 20 years prior to the current calendar year and that has been altered from the manufacturer's original design; or

(b) an engine that was manufactured to resemble an engine 20 or more years old and that has been constructed in whole or in part from nonoriginal materials.

(13) "Custom vehicle" means a motor vehicle other than a motorcycle that:

(a) (i) was manufactured with a model year after 1948 and that is at least 25 years old; or

(ii) was built to resemble a vehicle manufactured after 1948 and at least 25 years before the current calendar year, including a kit vehicle intended to resemble a vehicle manufactured after 1948 and that is at least 25 years old; and

(b) has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

(14) "Customer identification number" means:

(a) a driver's license or identification card number when the customer is an individual who has been issued a driver's license or identification card by a state driver licensing authority;

(b) a federal employer or tax identification number when the customer is a business entity that has been issued a federal employer or tax identification number;

(c) the identification number assigned by the secretary of state to a business entity authorized to do

business in this state under Title 35 if the customer is a business entity that does not have a federal employer or tax identification number other than a social security number; or

(d) if the customer has not been issued one of the numbers described in subsections (14)(a) through (14)(c), a number assigned to the customer by the department when a transaction is initiated under this title.

(15) (a) "Dealer" means a person that, for commission or profit, engages in whole or in part in the business of buying, selling, exchanging, or accepting on consignment new or used motor vehicles, trailers, semitrailers, pole trailers, travel trailers, motorboats, sailboats, snowmobiles, off-highway vehicles, or special mobile equipment that is not registered in the name of the person.

(b) The term does not include the following:

(i) receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under a judgment or order of any court of competent jurisdiction;

(ii) employees of the persons included in subsection (15)(b)(i) when engaged in the specific performance of their duties as employees; or

(iii) public officers while performing or in the operation of their duties.

(16) "Declared weight" means the total unladen weight of a vehicle plus the weight of the maximum load to be carried on the vehicle as stated by the registrant in the application for registration.

(17) "Department" means the department of justice acting directly or through its duly authorized officers or agents.

(18) "Dolly or converter gear" means a device consisting of one or two axles with a fifth wheel and trailer tongue used to support the forward end of a semitrailer, converting a semitrailer into a trailer.

(19) "Domiciled" means a place where:

(a) an individual establishes residence;

(b) a business entity maintains its principal place of business;

(c) the business entity's registered agent maintains an address; or

(d) a business entity most frequently uses, dispatches, or controls a motor vehicle, trailer, semitrailer, or pole trailer that it owns or leases.

(20) "Downgrade" means the removal of a person's privilege to operate a commercial motor vehicle, as maintained by the department on the individual Montana driving record and the CDLIS driver record for that

person.

(21) "Driver" means a person who drives or is in actual physical control of a vehicle.

(22) "Driver's license" means a license or permit to operate a motor vehicle issued under or granted by the laws of this state, including:

(a) any temporary license or learner license;

(b) the privilege of any person to drive a motor vehicle, whether or not the person holds a valid license;

(c) any nonresident's driving privilege;

(d) a motorcycle endorsement; or

(e) a commercial driver's license.

(23) "Electric personal assistive mobility device" means a device that has two nontandem wheels, is self-balancing, and is designed to transport only one person with an electric propulsion system that limits the maximum speed of the device to 12 1/2 miles an hour.

(24) "For hire" means an action performed for remuneration of any kind, whether paid or promised, either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements from which a remuneration is obtained or derived for transportation service.

(25) (a) "Golf cart" means a motor vehicle that is designed for use on a golf course to carry a person or persons and golf equipment and that has an average speed of less than 15 miles per hour.

(b) Except as provided in 61-3-201, a golf cart is exempt from titling, registration, and mandatory liability insurance requirements under this title.

(26) "Gross vehicle weight" means the weight of a vehicle without load plus the weight of any load on the vehicle.

(27) "Hazardous material" means:

(a) any material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under 49 CFR, part 172; or

(b) any quantity of a material listed as a select agent or toxin in 42 CFR, part 73.

(28) "Highway" or "public highway" means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to the use of the public for

purposes of vehicular travel.

(29) "Highway patrol officer" means a state officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

(30) "Implement of husbandry" means a vehicle that is designed for agricultural purposes and exclusively used by the owner of the vehicle in the conduct of the owner's agricultural operations.

(31) "Kit vehicle" is a motor vehicle assembled from a manufactured kit either as:

(a) a complete kit, consisting of a prefabricated body and chassis, to construct a new motor vehicle; or

(b) a kit with a prefabricated body to be mounted to an existing motor vehicle chassis and drivetrain, commonly referred to as a donor vehicle.

(32) "Light vehicle" means a motor vehicle commonly referred to as an automobile, van, sport utility vehicle, or truck having a manufacturer's rated capacity of 1 ton or less.

(33) "Low-speed electric vehicle" means a motor vehicle, on or by which a person may be transported, that:

(a) has four wheels;

(b) has a maximum speed of at least 20 miles an hour and no greater than 40 miles an hour as certified by the manufacturer;

(c) is propelled by its own power, using an electric motor or other device that transforms stored electrical energy into the motion of the vehicle;

(d) stores electricity in batteries, ultracapacitors, or similar devices, which are charged from the power grid or from renewable electrical energy sources;

(e) has a wheelbase of 40 inches or greater and a wheel diameter of 10 inches or greater;

(f) exhibits a manufacturer's compliance with 49 CFR, part 565, or displays a 17-character vehicle identification number as provided in 49 CFR, part 565; and

(g) is equipped as provided in 61-9-432.

(34) "Low-speed restricted driver's license" means a license limited to the operation of a low-speed electric vehicle or a golf cart issued under or granted by the laws of this state, including:

(a) a temporary license or learner license;

(b) the privilege of a person to drive a low-speed electric vehicle or golf cart under the authority of 61-5-122, whether or not the person holds a valid driver's license; and

(c) a nonresident's similarly restricted driving privilege.

(35) "Manufactured home" has the meaning provided in 15-24-201.

(36) "Manufacturer" includes any person engaged in the manufacture of motor vehicles, trailers, semitrailers, pole trailers, travel trailers, motorboats, sailboats, snowmobiles, or off-highway vehicles as a regular business.

(37) "Manufacturer's certificate of origin" means the original paper record produced and issued by the manufacturer of a vehicle or, if in a medium authorized by the department, an electronic record created and transmitted by the manufacturer of a vehicle to the manufacturer's agent or a licensed dealer. The record must establish the origin of the vehicle specifically described in the record and, upon assignment, transfers of ownership of the vehicle to the person or persons named in the certificate.

(38) (a) "Medium-speed electric vehicle" is a motor vehicle, on or by which a person may be transported, that:

(i) has a maximum speed of 45 miles an hour as certified by the manufacturer;

(ii) is propelled by its own power, using an electric motor or other device that transforms stored electrical energy into the motion of the vehicle;

(iii) stores electricity in batteries, ultracapacitors, or similar devices, which are charged from the power grid or from renewable electrical energy sources;

(iv) is fully enclosed and includes at least one door for entry;

(v) has a wheelbase of 40 inches or greater and a wheel diameter of 10 inches or greater;

(vi) exhibits a manufacturer's compliance with 49 CFR, part 565, or displays a 17-character vehicle identification number as provided in 49 CFR, part 565;

(vii) bears a sticker, affixed by the manufacturer or dealer, on the left side of the rear window that indicates the vehicle's maximum speed rating; and

(viii) as certified by the manufacturer, is equipped as provided in 61-9-432.

(b) A medium-speed electric vehicle must be treated as a light vehicle for purposes of titling and registration under Title 61, chapter 3.

(c) A medium-speed electric vehicle may not have a gross vehicle weight in excess of 5,000 pounds.

(39) "Mobile home" or "housetrailer" has the meaning provided in 15-24-201.

(40) "Montana resident" means:

(a) an individual who resides in Montana as determined under 1-1-215; or

(b) for the purposes of chapter 3, a business entity that maintains a principal place of business or a registered agent in this state.

(41) (a) "Motorboat" means a vessel, including a personal watercraft or pontoon, propelled by any machinery, motor, or engine of any description, whether or not the machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines.

(b) The term does not include a vessel that has a valid marine document issued by the U.S. coast guard or any successor federal agency.

(42) (a) "Motor carrier" means a person or corporation or its lessees, trustees, or receivers appointed by a court that are operating motor vehicles on a public highway in this state for the transportation of property for hire on a commercial basis.

(b) The term does not include motor carriers regulated under Title 69, chapter 12.

(43) (a) "Motorcycle" means a motor vehicle that has a seat or saddle for the use of the operator and that is designated to travel on not more than three wheels in contact with the ground. A motorcycle may carry one or more attachments and a seat for the conveyance of a passenger.

(b) A motorcycle designed for use on highways is a motor vehicle unless otherwise prescribed.

(c) A motorcycle designed for off-road recreational use is an off-highway vehicle unless it has been modified to meet the equipment standards specified in chapter 9 and has been registered for highway use.

(d) The term includes an autocycle.

(e) The term does not include a tractor, a bicycle or a moped as defined in 61-8-102, a motorized nonstandard vehicle, or a two- or three-wheeled all-terrain vehicle that is used exclusively on private property.

(44) (a) "Motor-driven cycle" means a motorcycle, including a motor scooter, with a motor that produces 5 horsepower or less.

(b) The term does not include a bicycle or a moped, as defined in 61-8-102, or a motorized nonstandard vehicle.

(45) "Motor home" means a motor vehicle:

(a) designed to provide temporary living quarters, built as an integral part of or permanently attached to a self-propelled motor vehicle chassis or van;

(b) containing permanently installed independent life support systems that meet the ANSIA/A119.2 standard; and

(c) providing at least four of the following types of facilities:

(i) cooking, refrigeration, or icebox;

(ii) self-contained toilet;

(iii) heating or air conditioning, or both;

(iv) potable water supply, including a faucet and sink; or

(v) separate 110-volt or 125-volt electrical power supply or a liquefied petroleum gas supply, or both.

(46) (a) "Motorized nonstandard vehicle" means a vehicle, on or by which a person may be transported, that:

(i) is propelled by its own power, using an internal combustion engine or an electric motor;

(ii) has a wheelbase of less than 40 inches and a wheel diameter of less than 10 inches; and

(iii) does not display a manufacturer's certification in accordance with 49 CFR, part 567, or have a 17-character vehicle identification number assigned by the manufacturer in accordance with 49 CFR, part 565.

(b) The term includes but is not limited to a motorized skateboard and a vehicle commonly known as a "pocket rocket".

(c) The term does not include a moped as defined in 61-8-102, an electric personal assistive mobility device, or a motorized wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person.

(47) (a) "Motor vehicle" means:

(i) a vehicle propelled by its own power and designed or used to transport persons or property on the highways of the state;

(ii) a quadricycle if it is equipped for use on the highways as prescribed in chapter 9; or

(iii) a golf cart only if it is equipped for use on the highways as prescribed in chapter 9 and is operated pursuant to 61-8-391 or by a person with a low-speed restricted driver's license.

(b) The term does not include a bicycle or a moped as defined in 61-8-102, an electric personal assistive mobility device, a motorized nonstandard vehicle, or a motorized wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.

(48) "New motor vehicle" means a motor vehicle, regardless of the mileage of the vehicle, the legal or equitable title to which has never been transferred by a manufacturer, distributor, or dealer to another person as the result of a retail sale.

(49) "Nonresident" means a person who is not a Montana resident.

(50) (a) "Not used for general transportation purposes" means the operation of a motor vehicle registered as a collector's item, a custom vehicle, a street rod, or a custom-built motorcycle to or from a car or motorcycle club activity or event or an exhibit, show, cruise night, or parade, or for other occasional transportation activity.

(b) The term does not include operation of a motor vehicle for routine or ordinary household maintenance, employment, education, or other similar purposes.

(51) (a) "Off-highway vehicle" means a self-propelled vehicle designed for recreation or cross-country travel on public lands, trails, easements, lakes, rivers, or streams. The term includes but is not limited to motorcycles, quadricycles, dune buggies, amphibious vehicles, air cushion vehicles, and any other means of land transportation deriving motive power from any source other than muscle or wind.

(b) The term does not include:

(i) vehicles designed primarily for travel on, over, or in the water;

(ii) snowmobiles; or

(iii) motor vehicles designed to transport persons or property on the highways unless the vehicle is used for off-road recreation on public lands.

(52) "Operator" means a person who is in actual physical control of a motor vehicle.

(53) "Owner" means a person who holds the legal title to a vehicle. If a vehicle is the subject of an agreement for the conditional sale of the vehicle with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or in the event a vehicle is subject to a lease, contract, or other legal arrangement vesting right of possession or control,

for security or otherwise, or in the event a mortgagor of a vehicle is entitled to possession, then the owner is the person in whom is vested the right of possession or control.

(54) "Person" means an individual, corporation, partnership, association, firm, or other legal entity.

(55) "Personal watercraft" means a vessel that uses an outboard motor or an inboard engine powering a water jet pump as its primary source of propulsion and that is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than by the conventional method of sitting or standing in the vessel.

(56) "Pole trailer" means a vehicle without power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable generally of sustaining themselves as beams between the supporting connections.

(57) "Police officer" means an officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

(58) (a) "Quadricycle" means a four-wheeled motor vehicle, designed for on-road or off-road use, having a seat or saddle on which the operator sits.

(b) The term does not include golf carts.

(59) "Railroad" means a carrier of persons or property on cars, other than streetcars, operated on stationary rails.

(60) (a) "Railroad train" or "train" means a steam engine or electric or other motor, with or without cars coupled to the engine, that is operated on rails.

(b) The term does not include streetcars.

(61) "Recreational vehicle" includes a motor home, travel trailer, or camper.

(62) "Registration" or "register" means the act or process of creating an electronic record, maintained by the department, of the assignment of a license plate or a set of license plates to and the issuance of a registration decal for a specific vehicle, the ownership of which has been established or is presumed in department records.

(63) "Registration decal" means an adhesive sticker produced by the department and issued by the department, its authorized agent, or a county treasurer to the owner of a motor vehicle, trailer, semitrailer, pole trailer, motorboat, sailboat, personal watercraft, or snowmobile as proof of payment of all fees imposed for the

registration period indicated on the sticker as recorded by the department under 61-3-101.

(64) "Registration receipt" means a paper record that is produced and issued or, if authorized by the department, an electronic record that is transmitted by the department, its authorized agent, or a county treasurer to the owner of a vehicle that identifies a vehicle, based on information maintained in the electronic record of title for the vehicle, and that provides evidence of the payment of all fees required to be paid for the registration of the vehicle for the registration period indicated in the receipt.

(65) "Retail sale" means the sale of a motor vehicle, trailer, semitrailer, pole trailer, travel trailer, motorboat, snowmobile, off-highway vehicle, or special mobile equipment by a dealer to a person for purposes other than resale.

(66) "Revocation" means the termination by action of the department of a person's driver's license, privilege to drive a motor vehicle on the public highways, and privilege to apply for and be issued a driver's license for a period of time designated by law, during which the license or privilege may not be renewed, restored, or exercised. An application for a new license may be presented and acted on by the department after the expiration of the period of the revocation.

(67) "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event that a highway includes two or more separate roadways, the term refers to any roadway separately but not to all roadways collectively.

(68) (a) "Sailboat" means a vessel that uses a sail and wind as its primary source of propulsion.

(b) The term does not include a canoe or kayak propelled by wind.

(69) "School zone" means an area near a school beginning at the school's front door, encompassing the campus and school property, and including the streets directly adjacent to the school property and for as many blocks surrounding the school as determined by the local authority establishing a special speed limit under 61-8-310(1)(d).

(70) "Sell" means to transfer ownership from one person to another person or from a dealer to another person for consideration.

(71) "Semitrailer" means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that some part of its weight and that of its load rests on or is carried by another vehicle.

(72) "Snowmobile" means a self-propelled vehicle of an overall width of 48 inches or less, excluding accessories, that is designed primarily for travel on snow or ice, that may be steered by skis or runners, and that is not otherwise registered or licensed under the laws of the state of Montana.

(73) "Special mobile equipment" means a vehicle not designed for the transportation of persons or property on the highways but incidentally operated or moved over the highways, including road construction or maintenance machinery, ditch-digging apparatus, and well-boring apparatus. The fact that equipment is permanently attached to a vehicle does not make the vehicle special mobile equipment. The enumeration in this subsection is partial and does not exclude other vehicles that are within the general terms of this subsection.

(74) (a) "Specially constructed vehicle" means a motor vehicle, including a motorcycle, that:

(i) was not originally constructed under a distinctive make, model, or type by a generally recognized manufacturer of motor vehicles;

(ii) has been structurally modified so that it does not have the same appearance as similar vehicles from a generally recognized manufacturer of motor vehicles;

(iii) has been constructed or assembled entirely from custom-built parts and materials not obtained from other vehicles;

(iv) has been constructed or assembled by using major component parts from one or more manufactured vehicles and that cannot be identified as a specific make or model; or

(v) has been constructed by the use of a kit that cannot be visually identified as a specific make or model.

(b) The term does not include a motor vehicle that has been repaired or restored to its original design by replacing parts.

(75) (a) "Sport utility vehicle" means a light vehicle designed to transport 10 or fewer persons that is constructed on a truck chassis or that has special features for occasional off-road use.

(b) The term does not include trucks having a manufacturer's rated capacity of 1 ton or less.

(76) (a) "Stop", when required, means complete cessation from movement.

(b) "Stop", "stopping", or "standing", when prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the

directions of a police officer, highway patrol officer, or traffic control sign or signal.

(77) "Storage lot" means property owned, leased, or rented by a dealer that is not contiguous to the dealer's established place of business where a motor vehicle from the dealer's inventory may be placed when space at the dealer's established place of business is not available.

(78) "Street" means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to the use of the public for purposes of vehicular travel.

(79) "Street rod" means a motor vehicle, other than a motorcycle, that:

(a) was manufactured prior to 1949 or was built to resemble a vehicle manufactured before 1949, including a kit vehicle intended to resemble a vehicle manufactured before 1949; and

(b) has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

(80) "Suspension" means the temporary withdrawal by action of the department of a person's driver's license, privilege to drive a motor vehicle on the public highways, and privilege to apply for or be issued a driver's license for a period of time designated by law.

(81) "Temporary registration permit" means a paper record:

(a) issued by the department, an authorized agent, a county treasurer, or a person, using a department-approved electronic interface after an electronic record has been transmitted to the department, that contains:

(i) required vehicle and owner information; and

(ii) the purpose for which the record was generated; and

(b) that, when placed in a durable license-plate style plastic pouch approved by the department and displayed as prescribed in 61-3-224, authorizes a person to operate the described motor vehicle, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for:

(i) 40 days from the date the record is issued or until the vehicle is registered under Title 23 or this title, whichever first occurs; or

(ii) 90 days from the date the record is issued for a permit issued pursuant to 61-3-303(3)(b).

(82) "Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highways for purposes of travel.

(83) (a) "Trailer" means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that no part of its weight rests on the towing vehicle.

(b) The term does not include a mobile home or a manufactured home, as defined in 15-1-101.

(84) "Transaction summary receipt" means an electronic record produced and issued by the department, its authorized agent, or a county treasurer for which a paper receipt is issued. The record may be created by the department and transmitted to the owner of a vehicle, a secured party, or a lienholder. The record must contain a unique transaction record number and summarize and verify the electronic filing of the transaction described in the receipt on the electronic record of title maintained under 61-3-101.

(85) "Travel trailer" means a vehicle:

(a) that is 40 feet or less in length;

(b) that is of a size or weight that does not require special permits when towed by a motor vehicle;

(c) with gross trailer area of less than 320 square feet; and

(d) that is designed to provide temporary facilities for recreational, travel, or camping use and not used as a principal residence.

(86) "Truck" or "motortruck" means a motor vehicle designed, used, or maintained primarily for the transportation of property.

(87) "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load drawn.

(88) "Under the influence" has the meaning provided in ~~61-8-401~~ [section 1].

(89) "Used motor vehicle" includes any motor vehicle that has been sold, bargained, exchanged, or given away or had its title transferred from the person who first took title to it from the manufacturer, importer, dealer, wholesaler, or agent of the manufacturer or importer and that has been used so as to have become what is commonly known as "secondhand" within the ordinary meaning of that term.

(90) "Van" means a motor vehicle designed for the transportation of at least six persons and not more than nine persons and intended for but not limited to family or personal transportation without compensation.

(91) (a) "Vehicle" means a device in, on, or by which any person or property may be transported or drawn on a public highway, except devices moved by animal power or used exclusively on stationary rails or

tracks.

(b) The term does not include a manually or mechanically propelled wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.

(92) "Vehicle identification number" means the number, letters, or combination of numbers and letters assigned by the manufacturer, by the department, or in accordance with the laws of another state or country for the purpose of identifying the motor vehicle or a component part of the motor vehicle.

(93) "Vessel" means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

(94) "Wholesaler" means a person that for a commission or with intent to make a profit or gain of money or other thing of value sells, exchanges, or attempts to negotiate a sale or exchange of an interest in a used motor vehicle, trailer, semitrailer, pole trailer, travel trailer, motorboat, snowmobile, off-highway vehicle, or special mobile equipment only to dealers and auto auctions licensed under chapter 4, part 1."

Section 30. Section 61-2-107, MCA, is amended to read:

"**61-2-107. License reinstatement fee to fund county drinking and driving prevention programs.** (1) Notwithstanding the provisions of any other law of the state, a driver's license that has been suspended or revoked under 61-5-205 or ~~61-8-402~~ [section 8] must remain suspended or revoked until the driver has paid to the department a fee of $200 in addition to any other fines, forfeitures, and penalties assessed as a result of conviction for a violation of the traffic laws of the state.

(2) The department shall deposit one-half of the fees collected under subsection (1) in the general fund and the other half in an account in the state special revenue fund to be used for funding county drinking and driving prevention programs as provided in 61-2-108."

Section 31. Section 61-2-302, MCA, is amended to read:

"**61-2-302. Establishment of driver rehabilitation and improvement program -- participation by offending drivers.** (1) The department may establish by administrative rule a driver rehabilitation and improvement program or programs. The programs may consist of electronic or classroom instruction in rules of

the road, driving techniques, defensive driving, driver attitudes and habits, actual on-the-road driver's training, and other subjects or tasks designed to contribute to proper driving attitudes, habits, and techniques and must include the requirements for obtaining a restricted probationary driver's license.

(2) Except when otherwise provided or restricted by statute, a person whose driver's license is suspended or revoked by the department, unless the suspension or revocation was for an offense under ~~61-8-401, 61-8-406, or 61-8-411~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)], may participate in any driver rehabilitation and improvement program established under this section if the person's license is:

(a) suspended as a result of a violation of the traffic laws of this state, unless the suspension was imposed under the authority provided in Title 61, chapter 8, part 8; or

(b) revoked and the person has:

(i) completed at least 3 months of a 1-year revocation; or

(ii) completed 1 year of a 3-year revocation; and

(iii) met the requirements for reobtaining a Montana driver's license.

(3) Notwithstanding any provision of this part inconsistent with any other law of the state of Montana, the enforcement of any suspension or revocation order that constitutes the basis for any person's participation in the driver rehabilitation and improvement program provided for in this section may be stayed if that person complies with the requirements established for the driver rehabilitation and improvement program and meets the eligibility requirements of subsection (2).

(4) If a person's driver's license has been surrendered before the person's selection for participation in the driver rehabilitation and improvement program, the license may be returned upon receipt of the person's agreement to participate in the program.

(5) The stay of enforcement of any suspension or revocation action must be terminated and the suspension or revocation action must be reinstated if a person declines to participate in the driver rehabilitation and improvement program or fails to meet the attendance or other requirements established for participation in the program.

(6) This part does not create a right to be included in any program established under this part.

(7) The department may establish a schedule of fees that may be charged to those persons participating in the driver improvement and rehabilitation program. The fees must be used to help defray costs

of maintaining the program.

(8) A person may be referred to this program by a driver improvement analyst, city judge, justice of the peace, youth court judge, or judge of a district court of the state.

(9) (a) Except as provided in subsection (9)(b), the department may issue a restricted probationary license to any person who enrolls and participates in the driver rehabilitation and improvement program. Upon issuance of a probationary license under this section, the licensee is subject to the restrictions set forth on the license.

(b) The department may not issue a restricted probationary license that would permit an individual to drive a commercial motor vehicle during a period in which:

(i) the individual is disqualified from operating a commercial motor vehicle under state or federal law; or

(ii) the individual's driver's license or driving privilege is revoked, suspended, or canceled.

(10) It is a misdemeanor for a person to operate a motor vehicle in any manner in violation of the restrictions imposed on a restricted license issued to the person under this section."

Section 32. Section 61-5-205, MCA, is amended to read:

"**61-5-205. Mandatory revocation or suspension of license upon certain convictions -- duration of action -- exceptions.** (1) The department shall revoke an individual's driver's license or driving privilege if the department receives notice from a court or another licensing jurisdiction that the individual has been convicted of any of the following offenses:

(a) negligent homicide resulting from the operation of a motor vehicle;

(b) any felony in the commission of which a motor vehicle is used;

(c) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

(d) perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of motor vehicles;

(e) fleeing from or eluding a peace officer; or

(f) negligent vehicular assault as defined in 45-5-205 involving a motor vehicle.

(2) The department shall suspend an individual's driver's license or driving privilege if the department receives notice from a court or another licensing jurisdiction that the individual has been convicted of any of the following offenses:

(a) a driving offense under ~~61-8-401, 61-8-406, or 61-8-411~~ [section 2];

(b) three reckless driving offenses committed within a period of 12 months; or

(c) a theft offense under 45-6-301 if the theft consisted of theft of motor vehicle fuel and a motor vehicle was used in the commission of the offense.

(3) A revocation under subsections (1)(a), (1)(b), and (1)(d) through (1)(f) must be for a period of 1 year. A revocation under subsection (1)(c) must be for a period of 2 years if the offender received a felony conviction under 61-7-103.

(4) (a) Except as provided in subsections (4)(b) and (4)(c), a suspension under subsection (2) must be for a period of 1 year.

(b) A suspension under subsection (2)(a) must be for the period set forth in 61-5-208.

(c) A suspension under subsection (2)(c) must be for one of the following periods:

(i) 30 days for a first offense;

(ii) 6 months for a second offense; and

(iii) 1 year for a third or subsequent offense."

Section 33. Section 61-5-208, MCA, is amended to read:

"**61-5-208. Period of suspension or revocation -- limitation on issuance of probationary license -- notation on driver's license.** (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways, except as permitted by law.

(2) (a) Except as provided in 44-4-1205 and 61-2-302 and except as otherwise provided in this section, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored until the revocation or suspension period has been completed.

(b) Subject to 61-5-231 and except as provided in subsection (4) of this section:

(i) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a

first offense of violating ~~61-8-401, 61-8-406, 61-8-411, or 61-8-465~~ [section 2], the department shall suspend the driver's license or driving privilege of the person for a period of 6 months;

(ii) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a second offense of violating ~~61-8-401, 61-8-406, 61-8-411, or 61-8-465~~ [section 2] within the time period specified in ~~61-8-734~~ [section 2], the department shall suspend the driver's license or driving privilege of the person for a period of 1 year and may not issue a probationary license during the period of suspension unless the person completes at least 45 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a probationary driver's license be issued subject to the requirements of ~~61-8-442~~ [section 6]. If the 1-year suspension period passes and the person has not completed chemical dependency treatment, as required under ~~61-8-732~~ [section 2], the license suspension remains in effect until treatment is completed.

(iii) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a third or subsequent offense of violating ~~61-8-401, 61-8-406, 61-8-411, or 61-8-465~~ [section 2] within the time period specified in ~~61-8-734~~ [section 2], the department shall suspend the driver's license or driving privilege of the person for a period of 1 year and may not issue a probationary license during the period of suspension unless the person completes at least 90 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a probationary driver's license be issued subject to the requirements of ~~61-8-442~~ [section 6]. If the 1-year suspension period passes and the person has not completed chemical dependency treatment, as required under ~~61-8-732~~ [section 2], the license suspension remains in effect until treatment is completed.

(3) (a) Except as provided in subsection (3)(b), the period of suspension or revocation for a person convicted of any offense that makes mandatory the suspension or revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

(b) A suspension commences from the last day of the prior suspension or revocation period if the suspension is for a conviction of driving with a suspended or revoked license.

(4) If a person is convicted of a violation of ~~61-8-401, 61-8-406, 61-8-411, or 61-8-465~~ [section 2] while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802.

(5) (a) A driver's license that is issued after a license revocation to a person described in subsection (5)(b) must be clearly marked with a notation that conveys the term of the person's probation restrictions.

(b) The provisions of subsection (5)(a) apply to a license issued to a person for whom a court has reported a felony conviction under ~~61-8-731~~ [section 4], the judgment for which has as a condition of probation that the person may not operate a motor vehicle unless:

(i) operation is authorized by the person's probation officer; or

(ii) a motor vehicle operated by the person is equipped with an ignition interlock device."

Section 34. Section 61-5-212, MCA, is amended to read:

"**61-5-212. Driving while license suspended or revoked -- penalty -- second offense of driving without licensing exemption.** (1) (a) A person commits the offense of driving a motor vehicle without statutory exemption or during a suspension or revocation period if the person drives:

(i) a motor vehicle on any public highway of this state at a time when the person's privilege to drive or apply for and be issued a driver's license is suspended or revoked in this state or any other state unless the person has obtained a restricted-use driving permit under 61-5-232;

(ii) a commercial motor vehicle while the person's commercial driver's license is revoked, suspended, or canceled in this state or any other state or the person is disqualified from operating a commercial motor vehicle or from obtaining a commercial driver's license; or

(iii) a motor vehicle on any public highway of this state without proof of a statutory exemption, as provided in 61-5-104.

(b) (i) A person convicted of the offense of driving a motor vehicle without proof of a statutory exemption for the second time shall be punished by imprisonment for not less than 2 days or more than 6 months and may be fined not more than $500.

(ii) Except as provided in subsection (1)(b)(iii), a person convicted of the offense of driving during a suspension or revocation period shall be fined an amount not to exceed $500 or be imprisoned for a term of not more than 6 months, or both.

(iii) If the reason for the suspension or revocation was that the person was convicted of a violation of ~~61-8-401, 61-8-406, or 61-8-411~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] or a similar offense under the

laws of any other state or the suspension was under ~~61-8-402 or 61-8-409~~ [section 8] or a similar law of any other state for refusal to take a test for alcohol or drugs requested by a peace officer who believed that the person might be driving under the influence, the person shall be imprisoned for a term of not less than 2 days or more than 6 months or be fined an amount not to exceed $2,000, or both, and in addition, the court may order the person to perform up to 40 hours of community service.

(2) (a) Upon receiving a record of the conviction of any person under this section upon a charge of driving a noncommercial vehicle while the person's driver's license, privilege to drive, or privilege to apply for and be issued a driver's license was suspended or revoked, the department shall extend the period of suspension or revocation for an additional 1-year period.

(b) Upon receiving a record of the conviction of any person under this section upon a charge of driving a commercial motor vehicle while the person's commercial driver's license was revoked, suspended, or canceled or the person was disqualified from operating a commercial motor vehicle under federal regulations, the department shall suspend the person's commercial driver's license in accordance with 61-8-802."

Section 35. Section 61-5-218, MCA, is amended to read:

"**61-5-218. License reinstatement fee following license suspension or revocation.** (1) Except as provided in subsection (2), a person whose driver's license, other than a commercial driver's license, or driving privilege has been suspended or revoked shall pay a reinstatement fee of $100 to the department to have the driver's license or driving privilege reinstated.

(2) (a) A person whose driver's license or driving privilege was suspended or revoked under 61-5-205 or ~~61-8-402~~ [section 8] shall pay a reinstatement fee as required by 61-2-107.

(b) A driver's license or driving privilege that was suspended or revoked under 61-5-207 must be reinstated without payment of a reinstatement fee.

(c) The reinstatement fee required under subsection (1) must be waived by the department when a court notifies the department that the person has satisfied the requirements of 61-5-214(2) and the court has determined that the person is indigent under the standards set forth in 47-1-111.

(3) The department shall deposit the fees collected under subsection (1) in the general fund."

Section 36. Section 61-5-231, MCA, is amended to read:

"**61-5-231. Authorization of probationary license by DUI court ~~-- definition~~.** (1) If a person convicted of a second or subsequent misdemeanor offense of driving under the influence of alcohol or drugs under ~~61-8-401 or 61-8-411~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)], driving with excessive alcohol concentration under ~~61-8-406~~ [section 2], or aggravated driving under the influence ~~under 61-8-465~~ as defined in [section 1] is participating in a DUI court as defined in [section 1], the court may, in the court's discretion, authorize a probationary driver's license for the participant subject to ~~61-8-442~~ [section 6] and any other conditions imposed within the scope of the court's authority.

(2) If the participant fails to comply with the court's conditions, the court may revoke the probationary driver's license and impose a driver's license suspension for the time period established pursuant to 61-5-208 commencing from the date of the court's revocation of the probationary license.

~~(3) For purposes of this section, "DUI court" means any court that has established a special docket for handling cases involving persons charged with violations under 61-8-401, 61-8-406, 61-8-411, or 61-8-465 and that implements a program of incentives and sanctions intended to assist a participant in completing treatment ordered pursuant to 61-8-732 and ending the participant's criminal behavior associated with driving under the influence of alcohol or drugs or with excessive alcohol concentration.~~"

Section 37. Section 61-5-405, MCA, is amended to read:

"**61-5-405. Offenses furnishing ground for suspension or revocation of license -- return to licensing jurisdiction of abstracts of court records and reports of conviction.** (1) Items enumerated in Article IV(1), subsections (a), (b), (c), and (d), of 61-5-401 refer specifically to 45-5-103, 45-5-104, ~~61-8-401~~ [section 2], the definition of felony as provided in 45-2-101, and 61-7-105, respectively.

(2) In addition to convictions mentioned in subsection (1), the department, for the purpose of suspension, revocation, or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported as it would if the conduct had occurred in this state for:

(a) convictions of perjury or the making of a false affidavit relating to the ownership or operation of a motor vehicle (61-5-303);

(b) three convictions of reckless driving committed within a period of 12 months (61-8-301); or

(c) convictions of careless driving resulting in death or reckless driving resulting in death.

(3) Court abstracts or reports of conviction received by the department that name an individual licensed in another jurisdiction must be forwarded to the jurisdiction of licensure. The department may not take action against the driver's license or driving privilege of the individual as may be required elsewhere in this title."

Section 38. Section 61-8-101, MCA, is amended to read:

"**61-8-101. Application -- exceptions.** (1) As used in this chapter, "ways of this state open to the public" means any highway, road, alley, lane, parking area, or other public or private place adapted and fitted for public travel that is in common use by the public.

(2) The provisions of this chapter relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except:

(a) where a different place is specifically referred to in a given section;

(b) the provisions of 61-8-301 and ~~61-8-401(1)(b), (1)(c), and (2)~~ [section 2(1) and (2)], with regard to operating a vehicle while under the influence of drugs, apply anywhere within this state;

(c) the provisions of 61-8-301 and ~~61-8-401 except subsections (1)(b), (1)(c), and (2) thereof, 61-8-402 through 61-8-405, and 61-8-465~~ [section 2], except under the influence of a dangerous drug and [section 2(2)], with regard to operating a vehicle while under the influence of alcohol, apply upon all ways of this state open to the public.

(3) The operation of motor vehicles directly across the public roads and highways of this state, especially as required in the transportation of natural resource products, including agricultural products and livestock, shall not be considered to be the operation of such vehicles on the public roads and highways of this state or on ways of this state open to the public, provided that such crossings are adequately marked with warning signs or devices. Such crossings are subject to provisions relating to stopping before entry and to restoration of any damage as may reasonably be prescribed by the state or local agency in control of safety of operation of the public highway involved."

Section 39. Section 61-8-102, MCA, is amended to read:

"**61-8-102. Uniformity of interpretation -- definitions.** (1) Interpretation of this chapter in this state

must be as consistent as possible with the interpretation of similar laws in other states.

(2) As used in this chapter, unless the context requires otherwise, the following definitions apply:

(a) "Authorized emergency vehicle" means a vehicle of a governmental fire agency organized under Title 7, chapter 33, an ambulance, or an emergency vehicle designated or authorized by the department.

(b) "Bicycle" means a vehicle propelled solely by human power on which any person may ride, irrespective of the number of wheels, except scooters, wheelchairs, and similar devices. The term includes an electrically assisted bicycle.

(c) "Bicycle trailer" means a device with one or more wheels that is designed to be towed by a bicycle.

(d) "Business district" means the territory contiguous to and including a highway when within any 600 feet along a highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, office buildings, railroad stations, and public buildings that occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of the highway.

(e) "Controlled-access highway" means a highway, street, or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the highway, street, or roadway except at the points and in the manner as determined by the public authority having jurisdiction over the highway, street, or roadway.

(f) "Crosswalk" means:

(i) that part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway; or

(ii) any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrians crossing by lines or other markings on the surface.

(g) "Electrically assisted bicycle" means a vehicle on which a person may ride that has two tandem wheels and an electric motor capable of propelling the vehicle and a rider who weighs 170 pounds no faster than 20 miles an hour on a paved, level surface.

(h) "Flag person" means a person who directs, controls, or alters the normal flow of vehicular traffic on a street or highway as a result of a vehicular traffic hazard then present on that street or highway. This person, except a uniformed traffic enforcement officer exercising the officer's duty as a result of a planned vehicular

traffic hazard, must be equipped as required by the rules of the department of transportation.

(i) "Highway" has the meaning provided in 61-1-101, but includes ways that have been or are later dedicated to public use.

(j) "Ignition interlock device" means ignition equipment that:

(i) analyzes the breath to determine blood alcohol concentration;

(ii) is approved by the department pursuant to ~~61-8-441~~ [section 13]; and

(iii) is designed to prevent a motor vehicle from being operated by a person who has consumed a specific amount of an alcoholic beverage.

(k) (i) "Intersection" means the area embraced within the prolongation or connection of the lateral curb lines or if there are no curb lines then the lateral boundary lines of the roadways of two highways that join one another at or approximately at right angles or the area within which vehicles traveling on different highways joining at any other angle may come in conflict.

(ii) When a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of the divided highway by an intersecting highway must be regarded as a separate intersection. If the intersecting highways also include two roadways 30 feet or more apart, then every crossing of two roadways of the highways must be regarded as a separate intersection.

(l) "Laned roadway" means a roadway that is divided into two or more clearly marked lanes for vehicular traffic.

(m) "Local authorities" means every county, municipal, and other local board or body having authority to enact laws relating to traffic under the constitution and laws of this state.

(n) "Moped" means a vehicle equipped with two or three wheels, foot pedals to permit muscular propulsion, and an independent power source providing a maximum of 2 brake horsepower. The power source may not be capable of propelling the device, unassisted, at a speed exceeding 30 miles an hour on a level surface. The device must be equipped with a power drive system that functions directly or automatically only and does not require clutching or shifting by the operator after the drive system is engaged.

(o) "Noncommercial motor vehicle" or "noncommercial vehicle" means any motor vehicle or combination of motor vehicles that is not included in the definition of commercial motor vehicle in 61-1-101 and includes but is not limited to the vehicles listed in 61-1-101(10)(b).

(p) "Official traffic control devices" means all signs, signals, markings, and devices not inconsistent with this title that are placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic.

(q) "Pedestrian" means any person on foot or any person in a manually or mechanically propelled wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person.

(r) "Police vehicle" means a vehicle used in the service of any law enforcement agency.

(s) "Private road" or "driveway" means a way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

(t) "Residence district" means the territory contiguous to and including a highway not comprising a business district when the property on the highway for a distance of 300 feet or more is primarily improved with residences or residences and buildings in use for business.

(u) "Right-of-way" means the privilege of the immediate use of the roadway.

(v) "Roadway" means the portion of a highway that is improved, designed, or ordinarily used for vehicular travel, including the paved shoulder.

(w) "School bus" has the meaning provided in 20-10-101.

(x) "Sidewalk" means the portion of a street that is between the curb lines or the lateral lines of a roadway and the adjacent property lines and that is intended for use by pedestrians.

(y) "Traffic control signal" means a device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed.

(z) "Urban district" means the territory contiguous to and including any street that is built up with structures devoted to business, industry, or dwelling houses situated at intervals of less than 100 feet for a distance of one-fourth mile or more."

Section 40. Section 61-8-805, MCA, is amended to read:

"**61-8-805. Suspension for operating commercial vehicle with alcohol concentration of 0.04 or more -- hearing.** (1) A person whose alcohol concentration is 0.04 or more while the person drives or is in actual physical control of a commercial motor vehicle is subject to the suspension of the person's commercial

driver's license. The peace officer who determines that the person is operating a commercial motor vehicle with an alcohol concentration of 0.04 or more shall immediately seize the person's commercial driver's license and, on behalf of the department, give the person written notice of the license suspension and the right to a hearing under 61-8-808. Upon receipt of a report certified under penalty of law from the peace officer that the person was operating a commercial motor vehicle with an alcohol concentration of 0.04 or more, the department shall suspend the license, with no provision for a restricted probationary commercial license, for:

(a) 1 year, upon receipt of the first report of a 0.04 or more alcohol concentration violation, except that if the violation occurred in a commercial motor vehicle transporting placardable hazardous materials, the suspension must be for 3 years; and

(b) life, upon receipt of a second or subsequent 0.04 or more alcohol concentration violation report at any time as determined from the records of the department, subject to federal rules allowing for driver rehabilitation and license reinstatement, if otherwise eligible, upon service of a minimum period of 10 years' suspension.

(2) A peace officer who determines that a commercial motor vehicle operator has a measured amount or detected presence of alcohol in the operator's body while operating a commercial motor vehicle shall place the commercial motor vehicle operator out of service as mandated by federal regulations for 24 hours.

(3) The fact that a person charged with a violation of the provisions of subsection (1) is entitled to use alcohol under the laws of Montana is not a defense against a charge of violating the provisions of subsection (1).

(4) For purposes of this section, a conviction for violation of ~~61-8-401or 61-8-406~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] while operating a commercial motor vehicle or a prior refusal to be tested under an implied consent law must be treated as a prior report of a 0.04 or more alcohol concentration violation and must be used in determining the length of the license suspension under subsection (1)."

Section 41. Section 61-8-807, MCA, is amended to read:

"**61-8-807. Administration of tests.** Tests required under this part must be administered as provided in ~~61-8-405~~ [section 11]."

Section 42. Section 61-11-101, MCA, is amended to read:

"**61-11-101. Report of convictions and suspension or revocation of driver's licenses -- surrender of licenses.** (1) If a person is convicted of an offense for which chapter 5 or chapter 8, part 8, makes mandatory the suspension or revocation of the driver's license or commercial driver's license of the person by the department, the court in which the conviction occurs shall require the surrender to it of all driver's licenses then held by the convicted person. The court shall, within 5 days after the conviction, forward the license and a record of the conviction to the department. If the person does not possess a driver's license, the court shall indicate that fact in its report to the department.

(2) A court having jurisdiction over offenses committed under a statute of this state or a municipal ordinance regulating the operation of motor vehicles on highways, except for standing or parking statutes or ordinances, shall forward a record of the conviction, as defined in 61-5-213, to the department within 5 days after the conviction. The court may recommend that the department issue a restricted probationary license on the condition that the individual comply with the requirement that the person attend and complete a chemical dependency education course, treatment, or both, as ordered by the court under ~~61-8-732~~ [section 5].

(3) A court or other agency of this state or of a subdivision of the state that has jurisdiction to take any action suspending, revoking, or otherwise limiting a license to drive shall report an action and the adjudication upon which it is based to the department within 5 days on forms furnished by the department.

(4) (a) On a conviction referred to in subsection (1) of a person who holds a commercial driver's license or who is required to hold a commercial driver's license, a court may not take any action, including deferring imposition of judgment, that would prevent a conviction for any violation of a state or local traffic control law or ordinance, except a parking law or ordinance, in any type of motor vehicle, from appearing on the person's driving record. The provisions of this subsection (4)(a) apply only to the conviction of a person who holds a commercial driver's license or who is required to hold a commercial driver's license and do not apply to the conviction of a person who holds any other type of driver's license.

(b) For purposes of this subsection (4), "who is required to hold a commercial driver's license" refers to a person who did not have a commercial driver's license but who was operating a commercial motor vehicle at the time of a violation of a state or local traffic control law or ordinance resulting in a conviction referred to in subsection (1).

(5) (a) If a person who holds a valid registry identification card or license issued pursuant to 50-46-307 or 50-46-308 is convicted of or pleads guilty to any offense related to driving under the influence of alcohol or drugs when the initial offense with which the person was charged was a violation of ~~61-8-401, 61-8-406, 61-8-410, or 61-8-411~~ [section 2], the court in which the conviction occurs shall require the person to surrender the registry identification card or license.

(b) Within 5 days after the conviction, the court shall forward the registry identification card and a copy of the conviction to the department of public health and human services."

Section 43. Section 67-1-211, MCA, is amended to read:

"**67-1-211. Alcohol concentration standards -- evidence admissible -- administration of tests.** (1) If a person acting or attempting to act as a crewmember of an aircraft has an alcohol concentration, as defined in [section 1] of 0.04% by weight or more ~~as defined in 61-8-407~~, it may be inferred that the person is under the influence of alcohol and is in violation of 67-1-204.

(2) Evidence of any measured amount or detected presence of alcohol in the person at the time of the act alleged under subsection (1) and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204.

(3) In any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204, the court or jury may consider federal regulations governing aeronautics.

(4) A person who operates an aircraft over the lands and waters of this state is considered to have given consent to a test of the person's blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol in the person's body if arrested by a peace officer for operating, attempting to operate, or being in actual physical control of an aircraft while under the influence of alcohol, drugs, or a combination of the two. The test must be administered at the direction of a peace officer who has reasonable grounds to believe the person was operating, attempting to operate, or in actual physical control of an aircraft while under the influence of alcohol, drugs, or a combination of the two. The arresting officer may designate which of the tests must be administered. A person who is unconscious or who is otherwise in a

condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by this subsection.

(5) If a person charged with a violation of 67-1-204 refuses to submit to a test of the person's blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol in the person's body, a test will not be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204.

(6) The provisions relating to administration of tests provided in ~~61-8-405~~ [section 11] and the definition of alcohol concentration provided in ~~61-8-407~~ [section 1] apply to any testing done to determine any measured amount or detected presence of alcohol in a person and the alcohol concentration of a person charged with violation of 67-1-204."

NEW SECTION. **Section 44. Repealer.** The following sections of the Montana Code Annotated are repealed:

61-8-401. Driving under influence of alcohol or drugs -- definitions.

61-8-402. Implied consent -- blood or breath tests for alcohol, drugs, or both -- refusal to submit to test -- administrative license suspension.

61-8-403. Right of appeal to court.

61-8-404. Evidence admissible -- conditions of admissibility.

61-8-405. Administration of tests.

61-8-406. Operation of noncommercial vehicle by person with alcohol concentration of 0.08 or more -- operation of commercial vehicle by person with alcohol concentration of 0.04 or more.

61-8-407. Definition of alcohol concentration.

61-8-408. Multiple convictions prohibited.

61-8-409. Preliminary alcohol screening test.

61-8-410. Operation of vehicle by person under 21 years of age with alcohol concentration of 0.02 or more.

61-8-411. Operation of noncommercial vehicle or commercial vehicle by person under influence of delta-9-tetrahydrocannabinol.

61-8-421. Forfeiture procedure.

61-8-422. Prohibition on transfer, sale, or encumbrance of vehicles subject to forfeiture -- penalty.

61-8-440. Ignition interlock device -- assisting in starting and operating -- circumventing -- penalty.

61-8-441. Department rules regarding ignition interlock devices -- ignition interlock device provider requirements.

61-8-442. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- ignition interlock device -- 24/7 sobriety and drug monitoring program -- forfeiture of vehicle.

61-8-460. Unlawful possession of open alcoholic beverage container in motor vehicle on highway.

61-8-461. Definitions.

61-8-465. Aggravated DUI.

61-8-714. Penalty for driving under influence of alcohol or drugs -- first through third offense.

61-8-722. Penalty for driving with excessive alcohol concentration or delta-9-tetrahydrocannabinol level -- first through third offense.

61-8-731. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- under influence of delta-9-tetrahydrocannabinol -- aggravated driving under the influence -- penalty for fourth or subsequent offense.

61-8-732. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- assessment, education, and treatment required.

61-8-733. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- ignition interlock device -- 24/7 sobriety and drug monitoring program -- forfeiture of vehicle.

61-8-734. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- conviction defined -- place of imprisonment -- home arrest -- exceptions -- deferral of sentence not allowed.

61-8-741. Suspension of imprisonment sentence for DUI court participation -- DUI court defined.

NEW SECTION. **Section 45. Codification instruction.** [Sections 1 through 17] are intended to be codified as an integral part of Title 61, chapter 8, and the provisions of Title 61, chapter 8, apply to [sections 1 through 17].

NEW SECTION. **Section 46. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 47. Effective date.** [This act] is effective January 1, 2022.

NEW SECTION. **Section 48. Applicability.** [This act] applies to DUI incidents taking place on or after [the effective date of this act].

- END -

AN ACT GENERALLY REVISING LAWS REGARDING DRIVING UNDER THE INFLUENCE; PROVIDING DEFINITIONS; PROVIDING FOR DRIVING UNDER THE INFLUENCE CRIMES, TREATMENT REQUIREMENTS, A SOBRIETY MONITORING PROGRAM, FORFEITURE PROVISIONS, IMPLIED CONSENT AND ADMINISTRATIVE LICENSE SUSPENSION, APPEAL PROCESS, CONDITIONS OF ADMISSIBILITY, A PROCESS FOR ADMINISTRATION OF TESTS, CONDITIONS FOR RECEIVING A PROBATIONARY DRIVER'S LICENSE, OPEN CONTAINER VIOLATIONS, AND REVOCATION AND SUSPENSION OF LICENSE PROCEDURES; PROVIDING RULEMAKING AUTHORITY; PROVIDING PENALTIES; AMENDING SECTIONS 23-2-535, 44-4-1205, 45-5-106, 45-5-205, 45-5-207, 45-5-628, 46-16-130, 46-18-201, 46-18-236, 50-46-320, 53-9-103, 61-1-101, 61-2-107, 61-2-302, 61-5-205, 61-5-208, 61-5-212, 61-5-218, 61-5-231, 61-5-405, 61-8-101, 61-8-102, 61-8-805, 61-8-807, 61-11-101, AND 67-1-211, MCA; REPEALING SECTIONS 61-8-401, 61-8-402, 61-8-403, 61-8-404, 61-8-405, 61-8-406, 61-8-407, 61-8-408, 61-8-409, 61-8-410, 61-8-411, 61-8-421, 61-8-422, 61-8-440, 61-8-441, 61-8-442, 61-8-460, 61-8-461, 61-8-465, 61-8-714, 61-8-722, 61-8-731, 61-8-732, 61-8-733, 61-8-734, AND 61-8-741, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. As used in [sections 1 through 17], unless the context requires otherwise and unless a different meaning plainly is required, the following definitions apply:

(1) "Aggravated driving under the influence" means a person is in violation of [section 2(1)(a), (1)(b), (1)(c), or (1)(d)] and:

(a) the person's alcohol concentration, as shown by analysis of the person's blood, breath, or other bodily substance, is 0.16 or more;

(b) the person is under the order of a court or the department to equip any motor vehicle the person

operates with an approved ignition interlock device;

(c) the person's driver's license or privilege to drive is suspended, canceled, or revoked as a result of a prior violation of driving under the influence, including a violation of [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence, or a similar offense under previous laws of this state or the laws of another state; or

(d) the person refuses to give a breath sample as required in [section 8] and the person's driver's license or privilege to drive was suspended, canceled, or revoked under the provisions of an implied consent statute.

(2) "Alcoholic beverage" means a compound produced for human consumption as a drink that contains 0.5% or more of alcohol by volume.

(3) "Alcohol concentration" means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath, including as used in 16-6-305, 23-2-535, 45-5-207, 67-1-211, and this title.

(4) "Bus" means a motor vehicle with a manufacturer's rated seating capacity of 11 or more passengers, including the driver.

(5) "Camper" has the meaning provided in 61-1-101.

(6) "Commercial motor vehicle" has the meaning provided in 61-1-101.

(7) "Drug" means any substance that when taken into the human body can impair a person's ability to operate a vehicle safely. The term includes the meanings provided in 50-32-101(6), (7), and (14).

(8) "DUI court" means any court that has established a special docket for handling cases involving persons convicted under [section 3 or 4] and that implements a program of incentives and sanctions intended to assist a participant to complete treatment ordered pursuant to [section 5] and to end the participant's criminal behavior associated with the use of alcohol or drugs.

(9) "Highway" has the meaning provided in 61-1-101, including the shoulders of the highway.

(10) "Motor home" has the meaning provided in 61-1-101.

(11) "Motor vehicle" has the meaning provided in 61-1-101.

(12) "Open alcoholic beverage container" means a bottle, can, jar, or other receptacle that contains any amount of an alcoholic beverage and that is open or has a broken seal or the contents of which are partially removed.

(13) "Passenger area" means the area designed to seat the driver and passengers while a motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while the driver or a passenger is seated in the vehicle, including an unlocked glove compartment.

(14) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any combination of alcohol and drugs, a person's ability to safely operate a vehicle has been diminished.

(15) "Vehicle" has the meaning provided in 61-1-101, except that the term does not include a bicycle.

Section 2. Driving under influence. (1) A person commits the offense of driving under the influence if the person drives or is in actual physical control of:

(a) a vehicle or a commercial motor vehicle upon the ways of this state open to the public while under the influence of alcohol, any drug, or a combination of alcohol and any drug;

(b) a noncommercial vehicle upon the ways of this state open to the public while the person's alcohol concentration, as shown by analysis of the person's blood, breath, or other bodily substance, is 0.08 or more;

(c) a commercial motor vehicle within this state while the person's alcohol concentration, as shown by analysis of the person's blood, breath, or other bodily substance, is 0.04 or more;

(d) a noncommercial vehicle or commercial motor vehicle within this state while the person's delta-9-tetrahydrocannabinol level, excluding inactive metabolites, as shown by analysis of the person's blood or other bodily substance, is 5 ng/ml or more; or

(e) a vehicle within this state when the person is under 21 years of age at the time of the offense while the person's alcohol concentration, as shown by analysis of the person's blood, breath, or other bodily substance, is 0.02 or more.

(2) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the person at the time of a test, as shown by analysis of a sample of the person's blood, breath, or other bodily substance drawn or taken within a reasonable time after the alleged act, gives rise to the following inferences:

(a) if there was at that time an alcohol concentration of 0.04 or less, it may be inferred that the person was not under the influence of alcohol;

(b) if there was at that time an alcohol concentration in excess of 0.04 but less than 0.08, that fact may not give rise to any inference that the person was or was not under the influence of alcohol, but the fact may be considered with other competent evidence in determining the guilt or innocence of the person; and

(c) if there was at that time an alcohol concentration of 0.08 or more, it may be inferred that the person was under the influence of alcohol. The inference is rebuttable.

(3) The provisions of subsection (2) do not limit the introduction of any other competent evidence bearing on the issue of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and drugs.

(4) Each municipality in this state is given authority to enact this section, with the word "state" changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and the imposition of the fines and penalties provided in the ordinance.

(5) Absolute liability, as provided in 45-2-104, is imposed for a violation of this section.

(6) When the same acts may establish the commission of an offense under subsection (1), a person charged with the conduct may be prosecuted for a violation of another relevant subsection under subsection (1). However, the person may be convicted of only one offense under this section or of a similar offense under previous laws of this state.

Section 3. Penalty for driving under influence -- first through third offenses. (1) (a) Except as provided in subsection (1)(b) or (1)(c), a person convicted of a violation of [section 2(1)(a)] shall be punished as follows:

(i) for a first violation, by imprisonment for not less than 24 consecutive hours or more than 6 months and by a fine of not less than $600 or more than $1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 48 consecutive hours or more than 1 year and by a fine of not less than $1,200 or more than $2,000;

(ii) for a second violation, by imprisonment for not less than 7 days or more than 1 year and by a fine of not less than $1,200 or more than $2,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 14 days or more than 1 year and a fine of not less than $2,400 or more than $4,000; or

(iii) for a third violation, by imprisonment for not less than 30 days or more than 1 year and by a fine of not less than $2,500 or more than $5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 60 days or more than 1 year and by a fine of not less than $5,000 or more than $10,000.

(b) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in [section 4].

(c) If the person has a prior conviction or pending charge for a violation of driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], or a similar offense under previous laws of this state or the laws of another state that meets the definition of aggravated driving under the influence in [section 1], the person shall be punished as provided in subsection (4).

(d) The mandatory minimum imprisonment term may not be served under home arrest and may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the person's physical or mental well-being.

(e) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending the person's successful completion of a chemical dependency treatment program pursuant to [section 5]. During any suspended portion of sentence imposed by the court:

(i) the person is subject to all conditions of the suspended sentence imposed by the court, including mandatory participation in drug or DUI courts, if available;

(ii) the person is subject to all conditions of the 24/7 sobriety and drug monitoring program, if available and if imposed by the court; and

(iii) if the person violates any condition of the suspended sentence or any treatment requirement, the court may impose the remainder of any imprisonment term that was imposed and suspended.

(2) (a) Except as provided in subsection (2)(b) or (2)(c), a person convicted of a violation of [section 2(1)(b), (1)(c), or (1)(d)] shall be punished as follows:

(i) for a first violation, by imprisonment for not more than 6 months and by a fine of not less than $600 or more than $1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not more than 6 months and by a fine of not less than $1,200 or more than $2,000;

(ii) for a second violation, by imprisonment for not less than 5 days or more than 1 year and by a fine of not less than $1,200 or more than $2,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 10 days or more than 1 year and by a fine of not less than $2,400 or more than $4,000; or

(iii) for a third violation, by imprisonment for not less than 30 days or more than 1 year and by a fine of not less than $2,500 or more than $5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 60 days or more than 1 year and by a fine of not less than $5,000 or more than $10,000.

(b) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in [section 4].

(c) If the person has a prior conviction or pending charge for a violation of driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], or a similar offense under previous laws of this state or the laws of another state that meets the definition of aggravated driving under the influence in [section 1], the person shall be punished as provided in subsection (4).

(d) The mandatory minimum imprisonment term may not be served under home arrest and may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the person's physical or mental well-being.

(e) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending the person's successful completion of a chemical dependency treatment program pursuant to [section 5]. During any suspended portion of sentence imposed by the court:

(i) the person is subject to all conditions of the suspended sentence imposed by the court, including mandatory participation in drug or DUI courts, if available;

(ii) the person is subject to all conditions of the 24/7 sobriety and drug monitoring program, if available and if imposed by the court; and

(iii) if the person violates any condition of the suspended sentence or any treatment requirement, the court may impose the remainder of any imprisonment term that was imposed and suspended.

(3) (a) A person convicted of a violation of [section 2(1)(e)] shall be punished as follows:

(i) Upon a first conviction under this section, a person shall be punished by a fine of not less than

$100 or more than $500.

(ii) Upon a second conviction under this section, a person shall be punished by a fine of not less than $200 or more than $500 and, if the person is 18 years of age or older, by incarceration for not more than 10 days.

(iii) Upon a third or subsequent conviction under this section, a person shall be punished by a fine of not less than $300 or more than $500 and, if the person is 18 years of age or older, by incarceration for not less than 24 consecutive hours or more than 60 days.

(iv) In addition to the punishment provided in this section, regardless of disposition:

(A) the person shall comply with the chemical dependency education course and chemical dependency treatment provisions in [section 5] as ordered by the court; and

(B) the department shall suspend the person's driver's license for 90 days upon the first conviction, 6 months upon the second conviction, and 1 year upon the third or subsequent conviction. A restricted or probationary driver's license may not be issued during the suspension period until the person has paid a license reinstatement fee in accordance with 61-2-107 and, if the person was under the age of 18 at the time of the offense, has completed at least 30 days of the suspension period.

(b) A conviction under this section may not be counted as a prior offense or conviction under [sections 3, 4, and 7].

(4) (a) A person convicted of a violation under [section 2] charged as aggravated driving under the influence, as defined in [section 1], shall be punished as follows:

(i) for a first violation, by imprisonment for not less than 2 days or more than 1 year and by a fine of $1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 4 consecutive days or more than 1 year and by a fine of $2,000;

(ii) for a second violation, by imprisonment for not less than 15 days or more than 1 year and by a fine of $2,500, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 45 days or more than 1 year and by a fine of $5,000; or

(iii) for a third violation, by imprisonment for not less than 40 consecutive days or more than 1 year and

by a fine of $5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 90 consecutive days or more than 1 year and by a fine of $10,000.

(b) The mandatory minimum imprisonment term may not be served under home arrest and may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the person's physical or mental well-being.

(c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending the person's successful completion of a chemical dependency treatment program pursuant to [section 5]. During any suspended portion of sentence imposed by the court:

(i) the person is subject to all conditions of the suspended sentence imposed by the court, including mandatory participation in drug or DUI courts, if available;

(ii) the person is subject to all conditions of the 24/7 sobriety and drug monitoring program, if available and if imposed by the court; and

(iii) if the person violates any condition of the suspended sentence or any treatment requirement, the court may impose the remainder of any imprisonment term that was imposed and suspended.

(d) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in [section 4].

(5) In addition to the punishment provided in this section, regardless of disposition, the person shall comply with the chemical dependency education course and chemical dependency treatment provisions in [section 5] as ordered by the court.

(6) A person punished pursuant to this section is subject to mandatory revocation or suspension of the person's driver's license as provided in chapter 5.

Section 4. Penalty for driving under influence -- fourth and subsequent offenses. (1) (a) A person convicted of a violation of driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, who has also been convicted under either 45-5-106 or any combination of three or more convictions under 45-5-104, 45-5-205, 45-5-628(1)(e), driving under

the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, and the offense under 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, any drug, or any combination of alcohol and any drug, as provided in [section 2(1)(a)], is guilty of a felony and shall be punished by:

(i) being sentenced to the department of corrections for a term of not less than 13 months or more than 2 years for placement in either an appropriate correctional facility or a program, followed by a consecutive term of 5 years to the Montana state prison or the Montana women's prison, all of which must be suspended, and a fine of not less than $5,000 or more than $10,000; or

(ii) being sentenced to a term of up to 5 years in an appropriate treatment court program, with required completion, and a fine of not less than $5,000 or more than $10,000. If sentenced under this alternative, the person may be entitled to a suspended sentence but is not eligible for a deferred imposition of sentence.

(b) Regarding the sentence provided for in subsection (1)(a)(i):

(i) the imposition or execution of the sentence may not be deferred or suspended, and the person is not eligible for parole;

(ii) the program in subsection (1)(a)(i) may be a residential alcohol treatment program approved by the department of corrections;

(iii) following initial placement of a defendant in a residential alcohol treatment program facility, the department of corrections may, at its discretion, place the offender in another facility or program;

(iv) the court shall order that if the person successfully completes a residential alcohol treatment program approved by the department of corrections, the remainder of the 13-month to 2-year term must be served on probation with the conditions that:

(A) the person abide by the standard conditions of probation promulgated by the department of corrections;

(B) a person who is financially able to pay the costs of imprisonment, probation, and alcohol treatment under this section does so;

(C) the person may not frequent an establishment where alcoholic beverages are served;

(D) the person may not consume alcoholic beverages;

(E) the person may not operate a motor vehicle unless authorized by the person's probation officer;

(F) the person enter in and remain in an aftercare treatment program for the entirety of the probationary period;

(G) the person submit to random or routine drug and alcohol testing; and

(H) if the person is permitted to operate a motor vehicle, the vehicle be equipped with an ignition interlock system; and

(v) the sentencing judge may impose on the defendant any other reasonable restrictions or conditions during the period of probation. Reasonable restrictions or conditions may include but are not limited to:

(A) payment of a fine as provided in 46-18-231;

(B) payment of costs as provided in 46-18-232 and 46-18-233;

(C) payment of costs of assigned counsel as provided in 46-8-113;

(D) community service;

(E) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of society; or

(F) any combination of the restrictions or conditions listed in subsections (1)(b)(v)(A) through (1)(b)(v)(E).

(2) A person convicted of a violation of driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, who was previously placed in a residential alcohol treatment program under subsection (1)(a)(i), whether or not the person successfully completed the program, and who has also been convicted under either 45-5-106 or any combination of four or more prior convictions under 45-5-104, 45-5-205, 45-5-628(1)(e), driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, and the offense under 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in [section 2(1)(a)], shall be punished by being sentenced to the department of corrections for a term of not less than 13 months or more

than 5 years or being fined an amount of not less than $5,000 or more than $10,000, or both.

(3) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-1014, and 46-23-1031 apply to a person sentenced under this section.

(4) A person punished pursuant to this section is subject to mandatory revocation or suspension of the person's driver's license as provided in chapter 5.

Section 5. Driving under influence -- assessment, education, and treatment required. (1) In addition to the punishments provided in [sections 3 and 4], regardless of disposition, a defendant convicted of a violation of driving under the influence, including [section 2], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state shall complete a chemical dependency assessment and:

(a) for a first conviction, except as provided in subsection (8)(b), a chemical dependency education course; and

(b) for a second or subsequent conviction for a violation of driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, except a fourth or subsequent conviction for which the defendant completes a residential alcohol treatment program under [section 4(1)(a)(i)], or as required by subsection (8) of this section, chemical dependency treatment.

(2) The sentencing judge may, in the judge's discretion, require the defendant to complete the chemical dependency assessment prior to sentencing the defendant. If the assessment is not ordered or completed before sentencing, the judge shall order the chemical dependency assessment as part of the sentence.

(3) The chemical dependency assessment and the chemical dependency education course must be completed at a treatment program approved by the department of public health and human services and must be conducted by a licensed addiction counselor. Approved programs must be evidence-based programs. The defendant may attend a treatment program of the defendant's choice as long as the treatment services are provided by a licensed addiction counselor. The defendant shall pay the cost of the assessment, the education course, and chemical dependency treatment and may use health insurance to cover the costs when possible.

(4) The assessment must describe the defendant's level of addiction, if any, and contain a recommendation as to education, treatment, or both. The assessment must conform to quality standards required by the department of public health and human services. A defendant who disagrees with the initial assessment may, at the defendant's cost, obtain a second assessment provided by a licensed addiction counselor or a program approved by the department of public health and human services.

(5) The treatment provided to the defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug problem, or both, as determined by a licensed addiction counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services. The rules must include evidence-based treatment programs or courses approved by the department that are likely to reduce recidivism. Upon determination, the court shall order the defendant's appropriate level of treatment. If more than one counselor makes a determination as provided in this subsection, the court shall order an appropriate level of treatment based on the determination of one of the counselors.

(6) Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a chemical dependency education course or treatment program. If the defendant fails to attend the course or treatment program, the counselor shall notify the court of the failure.

(7) A court or counselor may not require attendance at a self-help program other than at an open meeting, as that term is defined by the self-help program. A defendant may voluntarily participate in self-help programs.

(8) (a) Chemical dependency treatment must be ordered for a first-time or second-time offender convicted of a violation of driving under the influence, including [section 2], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, upon a finding of moderate or severe alcohol or drug use disorder made by a licensed addiction counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services.

(b) If treatment is ordered under subsection (8)(a) for a first-time offender, the offender may not also be required to attend a chemical dependency education course.

(9) (a) On a second or subsequent conviction, the treatment program provided for in subsection (5)

must be followed by monthly monitoring for a period of at least 1 year from the date of admission to the program.

(b) If a defendant fails to comply with the monitoring program imposed under subsection (9)(a), the court shall revoke the suspended sentence, if any, impose any remaining portion of the suspended sentence, and may include additional monthly monitoring for up to an additional 1 year.

(10) Notwithstanding 46-18-201(2), whenever a judge suspends a sentence imposed under [section 3] and orders the person to complete chemical dependency treatment under this section, the judge retains jurisdiction to impose any suspended sentence for up to 1 year.

Section 6. Driving under influence -- ignition interlock device -- 24/7 sobriety and drug monitoring program. (1) For a person convicted of a first offense of driving under the influence, including [section 2], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under the laws of another state, in addition to the punishments listed in [section 3], the court may, regardless of disposition and if a probationary license is recommended by the court, require the person to comply with the conditions listed in subsection (2)(a) or (2)(b).

(2) On a second or subsequent conviction for a violation of driving under the influence, including [section 2], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under the laws of another state, or a second or subsequent conviction under 61-5-212 when the reason for the suspension or revocation was that the person was convicted of a violation of driving under the influence, including [section 2], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, or the suspension was under [section 8] or a similar law of another state for refusal to take a test for alcohol or drugs requested by a peace officer who believed that the person might be driving under the influence, in addition to the punishments listed in [section 2] and [section 3], the court shall require the person:

(a) to participate in the 24/7 sobriety and drug monitoring program provided for in 44-4-1203 or require the person to participate in a court-approved alcohol or drug detection testing program and to pay the fees associated with the program;

(b) if recommending that a probationary license be issued to the person, restrict the person to driving

only a motor vehicle equipped with a functioning ignition interlock device during the probationary period and require the person to pay the reasonable cost of leasing, installing, and maintaining the device; or

(c) order that each motor vehicle owned by the person at the time of the offense be seized and subjected to the forfeiture procedure provided under [section 17].

(i) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(ii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

Section 7. Driving under influence -- conviction defined -- place of imprisonment -- home arrest -- exceptions -- deferral of sentence not allowed. (1) (a) For the purpose of determining the number of convictions for prior offenses referred to in [sections 1 through 4], "conviction" means:

(i) a final conviction, as defined in 45-2-101, in this state, in another state, or on a federally recognized Indian reservation;

(ii) a forfeiture, which has not been vacated, of bail or collateral deposited to secure the defendant's appearance in court in this state, in another state, or on a federally recognized Indian reservation; or

(iii) a conviction for a violation of driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, or a violation of a similar statute or regulation in another state or on a federally recognized Indian reservation.

(b) An offender is considered to have been previously convicted for the purposes of sentencing if less than 10 years have elapsed between the commission of the present offense and a previous conviction unless the offense is the offender's third or subsequent offense, in which case all previous convictions must be used

for sentencing purposes.

(c) A previous conviction for a violation of driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, or a violation of a similar statute or regulation in another state or on a federally recognized Indian reservation, and as otherwise defined in subsection (1)(a) may be counted for the purposes of determining the number of a subsequent conviction for a violation of driving under the influence under [section 2].

(d) A previous conviction for a violation of 45-5-104 for which the offense under 45-5-104 occurred while the person was operating a vehicle in violation of driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, and a previous conviction for a violation of 45-5-205 or 45-5-628(1)(e) may also be counted for the purposes of determining the number of a subsequent conviction for a violation of driving under the influence under [section 2].

(2) Except as provided in [section 4], the court may order that a term of imprisonment imposed under [section 3 or 4] be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and may require that the defendant follow the rules of the facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

(3) Subject to the limitations set forth in [section 3] concerning minimum periods of imprisonment, the court may order that a term of imprisonment imposed under [section 3] be served by imprisonment under home arrest, as provided in Title 46, chapter 18, part 10.

(4) A court may not defer imposition of sentence under [section 3 or 4].

(5) The provisions of 61-2-107, 61-5-205(2), and 61-5-208(2), relating to suspension of driver's licenses and later reinstatement of driving privileges, apply to any conviction under [section 3] for a violation of [section 2].

Section 8. Implied consent -- blood or breath tests for alcohol, drugs, or both -- refusal to submit to test -- administrative license suspension. (1) (a) A person who operates or is in actual physical control of a vehicle or commercial motor vehicle upon the ways of this state open to the public is considered to have given consent to a test or tests of the person's blood or breath for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body.

(b) The tests in subsection (1)(a) include but are not limited to a preliminary alcohol screening test of the person's breath for the purpose of estimating the person's alcohol concentration.

(c) A preliminary alcohol screening test may not be conducted or requested under this section unless both the peace officer and the instrument used to conduct the test have been certified by the department pursuant to rules adopted under the authority of [section 11(5)].

(d) The person's obligation to submit to a test in subsection (1)(a) is not satisfied by the person submitting to a preliminary alcohol screening test pursuant to this section.

(2) (a) The test or tests must be administered at the direction of a peace officer when:

(i) the peace officer has particularized suspicion to believe that the person has been driving or has been in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and the person has been detained for a violation of driving under the influence as provided in [section 2] or an offense that meets the definition of aggravated driving under the influence in [section 1];

(ii) the person is under the age of 21 and the peace officer has particularized suspicion to believe that the person has been driving or in actual physical control of a vehicle in violation of [section 2(1)(e)]; or

(iii) the peace officer has probable cause to believe that the person was driving or in actual physical control of a vehicle or commercial motor vehicle:

(A) in violation of driving under the influence, as provided in [section 2], and the person has been placed under arrest;

(B) in violation of driving under the influence as provided in [section 2], and the person has been involved in a motor vehicle crash or collision resulting in property damage;

(C) and the person has been involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in 45-2-101, or death; or

(D) in violation of driving under the influence as provided in [section 2] and meets the definition of aggravated driving under the influence in [section 1].

(b) A peace officer may designate which test or tests are administered.

(c) The peace officer shall inform the person of the right to refuse the test and that the refusal to submit to the test will result in the suspension for up to 1 year of that person's driver's license.

(d) A hearing as provided for in [section 9] must be available. The issues in the hearing must be limited to determining whether a peace officer had a particularized suspicion that the person was in violation of [section 2] or an offense meeting the definition of aggravated driving under the influence in [section 1], and whether the person refused to submit to the test.

(e) If a person refuses a preliminary alcohol screening test and another test during the same incident, the department may not consider each a separate refusal for purposes of suspension of the person's driver's license.

(3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent requested in subsection (1).

(4) (a) If an arrested person refuses to submit to one or more tests requested and designated by the peace officer, the refused test or tests may not be given unless the person has refused to provide a breath, blood, urine, or other bodily substance in a prior investigation in this state or under a substantially similar statute in another jurisdiction or the arrested person has a prior conviction or pending offense for a violation of 45-5-104, 45-5-106, 45-5-205, or driving under the influence, including [section 2], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or a similar statute in another jurisdiction.

(b) Upon the person's refusal to provide the breath, blood, urine, or other bodily substance requested by the peace officer pursuant to subsection (1) and this subsection (4) may apply for a search warrant to be issued pursuant to 46-5-224 to collect a sample of the person's blood for testing.

(c) (i) Upon the person's refusal to provide a breath, blood, urine, or other bodily substance, the peace officer shall, on behalf of the department, immediately seize the person's driver's license. The peace officer shall immediately forward the license to the department, along with a report certified under penalty of law stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing request and

confirming that the person refused to submit to one or more tests requested and designated by the peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in [section 16].

(ii) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of issuance, and shall provide the driver with written notice of the license suspension and the right to a hearing as provided in [section 9].

(iii) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or more tests.

(5) This section does not apply to tests, samples, and analyses of blood or breath used for purposes of medical treatment or care of an injured motorist, related to a lawful seizure for a suspected violation of an offense not in this part, or performed pursuant to a search warrant.

(6) This section does not prohibit the release of information obtained from tests, samples, and analyses of blood or breath for law enforcement purposes as provided in 46-4-301 and [section 11(6)].

Section 9. Right of appeal to court. (1) Within 30 days after notice of the right to a hearing has been given by a peace officer, a person may file a petition to challenge the license suspension or revocation in the district court in the county where the arrest was made.

(2) The court has jurisdiction and shall set the matter for hearing. The court shall give at least 10 days' written notice of the hearing to the county attorney of the county where the arrest was made and to the city attorney if the incident leading to the suspension or revocation resulted in a charge filed in a city or municipal court. The county attorney or city attorney may represent the state. If the county attorney and the city attorney cannot agree on who will represent the state, the county attorney shall represent the state.

(3) Upon request of the petitioner, the court may order the department to return the seized license or issue a stay of the suspension or revocation action pending the hearing.

(4) The court shall take testimony, examine the facts of the case, and determine whether the petitioner is entitled to a license or whether the petitioner's license is subject to suspension or revocation based

on no other issues than:

(a) whether a peace officer had a basis for requesting a test or tests as set forth in [section 8], and

(b) whether the person refused to submit to one or more tests designated by the peace officer.

(5) This section does not grant a right of appeal to a state court if a driver's license is initially seized, suspended, or revoked pursuant to a tribal law or regulation that requires alcohol or drug testing of motor vehicle operators.

Section 10. Evidence admissible -- conditions of admissibility. (1) Upon the trial of a criminal action or other proceeding arising out of acts alleged to have been committed by a person in violation of driving under the influence, including [section 2], an offense that meets the definition of aggravated driving under the influence in [section 1], a similar offense under previous laws of this state or the laws of another state, or 61-8-805:

(a) evidence of any measured amount or detected presence of alcohol, drugs, or a combination of alcohol and drugs in the person at the time of a test, as shown by an analysis of the person's blood or breath, is admissible. A positive test result does not, in itself, prove that the person was under the influence of a drug or drugs at the time the person was in control of a vehicle. A person may not be convicted of a violation of [section 2(1)(a)] based on the presence of a drug or drugs in the person unless some other competent evidence exists that tends to establish that the person was under the influence of a drug or drugs while driving or in actual physical control of a motor vehicle within this state.

(b) a report of the facts and results of one or more tests of a person's blood or breath is admissible in evidence if:

(i) a breath test or preliminary alcohol screening test was performed by a person certified by the forensic sciences division of the department to administer the test; or

(ii) a blood sample was analyzed in a laboratory operated or certified by the department or in a laboratory exempt from certification under the rules of the department and the blood was withdrawn from the person by a person competent to do so under [section 11(1)]; and

(c) a report of the facts and results of a physical, psychomotor, or physiological assessment of a person is admissible in evidence if it was made by a person trained by the department or by a person who has

received training recognized by the department.

(2) If the person under arrest refused to submit to one or more tests under [section 8], whether or not a sample was subsequently collected for any purpose, proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a vehicle upon the ways of this state open to the public while under the influence of alcohol, drugs, or a combination of alcohol and drugs. The trier of fact may infer from the refusal that the person was under the influence. The inference is rebuttable.

(3) The provisions of this part do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and drugs.

Section 11. Administration of tests. (1) Only a licensed physician, registered nurse, or other qualified person acting under the supervision and direction of a physician or registered nurse may, at the request of a peace officer, withdraw blood for the purpose of determining any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person. This limitation does not apply to the sampling of breath.

(2) In addition to any test administered at the direction of a peace officer, a person may request that an independent blood sample be drawn by a physician or registered nurse for the purpose of determining any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person. The peace officer may not unreasonably impede the person's right to obtain an independent blood test. The peace officer may but has no duty to transport the person to a medical facility or otherwise assist the person in obtaining the test. The cost of an independent blood test is the sole responsibility of the person requesting the test. The failure or inability to obtain an independent test by a person does not preclude the admissibility in evidence of any test given at the direction of a peace officer.

(3) Upon the request of the person tested, full information concerning any test given at the direction of the peace officer must be made available to the person or the person's attorney.

(4) A physician, registered nurse, or other qualified person acting under the supervision and direction of a physician or registered nurse does not incur any civil or criminal liability as a result of the proper

administering of a blood test when requested in writing by a peace officer to administer a test.

(5) The department in cooperation with any appropriate agency shall adopt uniform rules for the giving of tests and may require certification of training to administer the tests as considered necessary.

(6) If a peace officer has probable cause to believe that a person has violated [section 2], meets the definition of aggravated driving under the influence as defined in [section 1], or has violated 61-8-805 and a sample of blood, breath, urine, or other bodily substance is taken from that person for any reason, a portion of that sample sufficient for analysis must be provided to a peace officer if requested for law enforcement purposes and upon issuance of a subpoena as provided in 46-4-301.

Section 12. Ignition interlock device -- assisting in starting and operating -- circumventing -- penalty. (1) It is unlawful for a person who is subject to a restriction under [section 6] to operate a vehicle that is not equipped with an ignition interlock device.

(2) A person may not knowingly assist a person who is restricted to the use of an ignition interlock device to start and operate the restricted person's vehicle.

(3) A person may not knowingly circumvent the operation of an ignition interlock device.

(4) A person convicted of a violation of this section shall be punished by a fine of not more than $500 or by imprisonment for not more than 6 months or both.

(5) This section does not apply if:

(a) the starting of a motor vehicle or the request to start a motor vehicle equipped with an ignition interlock device is done for the purpose of safety or mechanical repair of the device or the vehicle; and

(b) the person subject to the restriction does not operate the vehicle.

Section 13. Department rules regarding ignition interlock devices -- ignition interlock device provider requirements. (1) The department shall adopt rules providing for the approval of ignition interlock devices and the installation, calibration, repair, and removal of approved devices.

(2) The department's rules must be based on federal standards issued for similar devices.

(3) An ignition interlock device that is approved by the department must also:

(a) be designed so it does not impede safe operation of the vehicle;

(b) correlate well with the level established for alcohol impairment;

(c) work accurately and reliably in an unsupervised environment and under extreme weather conditions;

(d) require a deep lung breath sample or use an equally accurate measure of blood alcohol concentration equivalence;

(e) resist tampering and show evidence of tampering if it is attempted;

(f) be difficult to circumvent;

(g) minimize inconvenience of a sober user;

(h) operate reliably over the range of automobile environments and in connection with various manufacturing standards; and

(i) be manufactured by a person who is adequately insured for product liability.

(4) An ignition interlock device provider shall include in any lease agreement for an ignition interlock device a warning that a person who knowingly tampers with, circumvents, or otherwise misuses the device is subject to criminal prosecution.

Section 14. Unlawful possession of open alcoholic beverage container in motor vehicle on highway. (1) Except as provided in subsection (2), a person commits the offense of unlawful possession of an open alcoholic beverage container in or on a motor vehicle if the person knowingly possesses an open alcoholic beverage container within the passenger area of a motor vehicle on a highway.

(2) This section does not apply to an open alcoholic beverage container:

(a) in a locked glove compartment or storage compartment;

(b) in a motor vehicle trunk or luggage compartment or rack, or in a truck bed or cargo compartment;

(c) behind the last upright seat of a motor vehicle that is not equipped with a trunk;

(d) in a closed container in the area of a motor vehicle that is not equipped with a trunk and that is not normally occupied by the driver or a passenger; or

(e) in the immediate possession of a passenger:

(i) of a bus, taxi, or limousine that is used for the transportation of persons for compensation and that includes the provision of a hired driver; or

(ii) in the living quarters of a camper, travel trailer, or motor home.

(3) (a) A person convicted of the offense of unlawful possession of an open alcoholic beverage container in a motor vehicle shall be fined an amount not to exceed $100.

(b) A violation of this section is not a criminal offense within the meaning of 3-1-317, 3-1-318, 45-2-101, 46-18-236, 61-8-104, and 61-8-711 and may not be recorded or charged against a driver's record, and an insurance company may not hold a violation of this section against the insured or increase premiums because of the violation. The surcharges provided for in 3-1-317, 3-1-318, and 46-18-236 may not be imposed for a violation of this section.

Section 15. Suspension of imprisonment sentence for DUI court participation. (1) If a person participates in a DUI court, the court may, at the court's discretion, suspend all or a portion of an imprisonment sentence under [section 3], except for the mandatory minimum imprisonment term.

(2) If a person participating in a DUI court fails to comply with the conditions imposed by the DUI court, the court shall revoke the suspended imprisonment sentence and any sentence subsequently imposed must commence from the effective date of the revocation.

Section 16. Mandatory suspension of license following certain implied consent action. (1) The department shall suspend an individual's driver license if the department receives a report for an implied consent violation from law enforcement or another reporting jurisdiction that, pursuant to [section 8], an individual has refused a test or tests of the person's blood, breath, urine, or other bodily substance for determining any measured amount or detected presence of alcohol or drugs in the person's body.

(2) (a) Except as permitted by law, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended may not have the license or privilege renewed or restored until the revocation or suspension duration has been completed.

(b) The department shall apply the appropriate sanction to the driver based on the reported conviction and prior offenses.

(c) The driver shall pay all reinstatement and administrative fees owed to the department before a driver's license or privilege to drive is restored.

(d) The duration of the suspension commences from the date of violation.

(e) If a person refuses tests for the same incident, the department may not consider each a separate refusal for purposes of suspension.

(f) The department may not issue a probationary license during the suspension issued under this part.

(3) (a) A person who has an implied consent violation shall pay the department an administrative fee of $300, which must be deposited in the state special revenue account established pursuant to subsection (3)(b).

(b) There is a blood-draw search warrant processing account in the state special revenue fund established pursuant to 17-2-102(1)(b). Money provided to the department of justice pursuant to this subsection (3) must be deposited in the account and may be used only for providing forensic analysis of a driver's blood to determine the presence of alcohol or drugs.

(4) (a) Upon receiving a report of an implied consent violation, the department shall:

(i) for a first violation, suspend the driver's license or driving privilege for 6 months with no provision for a restricted probationary license; or

(ii) for a second or subsequent violation within 5 years of a previous refusal, as determined from the records of the department, suspend the driver's license or driving privilege for 1 year with no provision for a restricted probationary license.

(b) If a person who refuses to submit to one or more tests under this section is the holder of a commercial driver's license, in addition to any action taken against the driver's noncommercial driving privileges, the department shall:

(i) upon a first refusal, suspend the person's commercial driver's license for 1 year; and

(ii) upon a second or subsequent refusal, suspend the person's commercial driver's license for life, subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person is otherwise eligible, upon completion of a minimum suspension period of 10 years. If the person has a prior conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the conviction has the same effect as a previous testing refusal.

(5) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or

more tests.

(6) The department may recognize the seizure of a license of a tribal member by a peace officer acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department under this subsection is not reviewable under [section 9].

Section 17. Forfeiture procedure. (1) A motor vehicle forfeited under [section 6] must be seized by the arresting agency within 10 days after the conviction and disposed of as provided in Title 44, chapter 12, part 2. Except as provided in this section, the provisions of Title 44, chapter 12, part 2, apply to the extent applicable.

(2) Forfeiture proceedings under 44-12-207 through 44-12-211 must be instituted by the arresting agency within 20 days after the seizure of the motor vehicle.

(3) (a) For purposes of 44-12-213, the proceeds of the sale of the motor vehicle must be distributed first to the holders of security interests who have presented proper proof of their claims, up to the amount of the interests or the amount received from the sale, whichever is less, and the remainder to the general fund of the arresting agency.

(b) A holder of a security interest may petition the sentencing court for transfer of title to the motor vehicle to the holder of the security interest if the secured interest is equal to or greater than the estimated value of the motor vehicle.

(4) Actions the court may take under 44-12-212(3) to protect the rights of innocent persons include return of the motor vehicle without a sale to an owner who is unable to present an adequate defense under this section but is found by the court to be without fault.

Section 18. Section 23-2-535, MCA, is amended to read:

"**23-2-535. Alcohol concentration standards -- evidence admissible -- administration of tests.** (1) The inferences contained in ~~61-8-401(4)~~ [section 2] apply to any criminal action or proceeding arising out of

acts alleged to have been committed in violation of 23-2-523(2).

(2) Evidence of any measured amount or detected presence of alcohol in a person at the time of the act alleged, as shown by analysis of the person's blood, breath, or urine, and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(3) If a person charged with violation of 23-2-523(2) refuses to submit to a test of the person's blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol, none will be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(4) The provisions relating to administration of tests provided in ~~61-8-405~~ [section 11] and the definition of alcohol concentration provided in ~~61-8-407~~ [section 1] apply to any testing done to a person charged with violation of 23-2-523(2).

(5) As used in 23-2-523(2), the term "under the influence" has the meaning provided in ~~61-8-401(3)~~ [section 1]."

Section 19. Section 44-4-1205, MCA, is amended to read:

"**44-4-1205. Authority of court to order participation in sobriety and drug monitoring program -- probationary license -- imposition of conditions.** (1) (a) Any court or agency utilizing the sobriety program may stay any sanctions that it imposed against an offender while the offender is in compliance with the sobriety program.

(b) If an individual convicted of the offense of aggravated driving under the influence ~~in violation of 61-8-465~~ as defined in [section 1], a second or subsequent offense of driving under the influence in violation of ~~61-8-401~~ [section 2], or a second or subsequent offense of driving with excessive alcohol concentration in violation of ~~61-8-406~~ [section 2(1)(b), (1)(c), or (1)(d)] has been required to participate in the sobriety program, the court may, upon the individual's obtaining proof of insurance pursuant to 61-6-301, notify the department that as a participant in the sobriety program, the individual is eligible for a restricted probationary driver's license pursuant to 61-2-302, notwithstanding the requirements of 61-5-208 that an individual is required to complete a

certain portion of a suspension period before a probationary license may be issued.

(c) If the individual fails to comply with the requirements of the sobriety program, the court may notify the department of the individual's noncompliance and direct the department to withdraw the individual's probationary driver's license and reinstate the remainder of the suspension period provided in 61-5-208.

(2) Upon an offender's participation in the sobriety program and payment of the fees required by 44-4-1204:

(a) the court may condition any bond or pretrial release for an individual charged with ~~a violation of 61-8-465~~ aggravated driving under the influence as defined in [section 1], a second or subsequent violation of ~~61-8-401 or 61-8-406~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] or aggravated driving under the influence as defined in [section 1], or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime;

(b) the court may condition the granting of a suspended execution of sentence or probation for an individual convicted of ~~a violation of 61-8-465~~ aggravated driving under the influence as defined in [section 1], a second or subsequent violation of ~~61-8-401 or 61-8-406~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] or aggravated driving under the influence as defined in [section 1], or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime;

(c) the board of pardons and parole may condition parole for ~~a violation of 61-8-465~~ aggravated driving under the influence as defined in [section 1], a second or subsequent violation of ~~61-8-401 or 61-8-406~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] or aggravated driving under the influence as defined in [section 1], or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime; or

(d) the department of corrections may establish conditions for conditional release for a violation of ~~61-8-465~~ aggravated driving under the influence as defined in [section 1], a second or subsequent violation of ~~61-8-401 or 61-8-406~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] or aggravated driving under the influence as defined in [section 1], or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the

crime.

(3) An entity referred to in subsections (2)(a) through (2)(d) may condition any bond or pretrial release, suspended execution of sentence, probation, parole, or conditional release as provided in those subsections for an individual charged with or convicted of a violation of any statute involving domestic abuse or the abuse or neglect of a minor if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime regardless of whether the charge or conviction was for a first, second, or subsequent violation of the statute.

(4) A person is eligible to participate in and a court may compel a person to participate in a sobriety program if the person:

(a) is charged with ~~violating 61-8-465~~ aggravated driving under the influence as defined in [section 1]; or

(b) (i) is charged with or has been convicted of violating ~~61-8-401 or 61-8-406~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] or aggravated driving under the influence as defined in [section 1]; and

(ii) at any time in the 10 years preceding the date of the current charge or conviction:

(A) has been convicted in this state of a violation of ~~61-8-401, 61-8-406, or 61-8-465~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] or aggravated driving under the influence as defined in [section 1];

(B) has been convicted of a violation of a statute or regulation in another state or on a federally recognized Indian reservation that is similar to ~~61-8-401, 61-8-406, or 61-8-465~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] or aggravated driving under the influence as defined in [section 1]; or

(C) has forfeited bail or collateral deposited to secure the defendant's appearance in court in this state, in another state, or on a federally recognized Indian reservation for a charge of violating ~~61-8-401, 61-8-406, 61-8-465~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] or aggravated driving under the influence as defined in [section 1], or a similar statute or regulation and the forfeiture has not been vacated.

(5) As used in this section, "conviction" has the meaning provided in 45-2-101."

Section 20. Section 45-5-106, MCA, is amended to read:

"**45-5-106. Vehicular homicide while under influence.** (1) A person commits the offense of vehicular homicide while under the influence if the person negligently causes the death of another human being

while the person is operating a vehicle in violation of ~~61-8-401, 61-8-406, or 61-8-411~~ [section 2].

(2) Vehicular homicide while under the influence is not an included offense of deliberate homicide as described in 45-5-102(1)(b).

(3) A person convicted of vehicular homicide while under the influence shall be imprisoned in a state prison for a term not to exceed 30 years or be fined an amount not to exceed $50,000, or both. Imposition of a sentence may not be deferred."

Section 21. Section 45-5-205, MCA, is amended to read:

"**45-5-205. Negligent vehicular assault -- penalty.** (1) A person who negligently operates a vehicle, other than a bicycle as defined in 61-8-102, while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided for in ~~61-8-401(1)~~ [section 2], and who causes bodily injury to another commits the offense of negligent vehicular assault.

(2) Subject to subsection (3), a person convicted of the offense of negligent vehicular assault shall be fined an amount not to exceed $1,000 or incarcerated in a county jail for a term not to exceed 1 year, or both, and shall be ordered to pay restitution as provided in 46-18-241.

(3) A person convicted of the offense of negligent vehicular assault who caused serious bodily injury to another shall be fined an amount not to exceed $10,000 or incarcerated for a term not to exceed 10 years, or both, and shall be ordered to pay restitution as provided in 46-18-241.

(4) If a term of incarceration is imposed under subsection (2) or (3), the judge may suspend the term of incarceration upon the condition of payment of any fine imposed and of restitution. If the person does not pay the fine or restitution, the term of incarceration may be imposed."

Section 22. Section 45-5-207, MCA, is amended to read:

"**45-5-207. Criminal endangerment -- penalty.** (1) A person who knowingly engages in conduct that creates a substantial risk of death or serious bodily injury to another commits the offense of criminal endangerment. This conduct includes but is not limited to knowingly placing in a tree, log, or any other wood any steel, iron, ceramic, or other substance for the purpose of damaging a saw or other wood harvesting, processing, or manufacturing equipment.

(2) A high blood alcohol concentration, ~~as provided in 61-8-407,~~ alone is not sufficient to support a criminal endangerment charge.

(3) A person convicted of the offense of criminal endangerment shall be fined an amount not to exceed $50,000 or imprisoned in the state prison for a term not to exceed 10 years, or both.

(4) As used in this section, "alcohol concentration" has the meaning provided in [section 1]."

Section 23. Section 45-5-628, MCA, is amended to read:

"**45-5-628. Criminal child endangerment**. (1) A person commits the offense of criminal child endangerment if the person purposely, knowingly, or negligently causes substantial risk of death or serious bodily injury to a child under 14 years of age by:

(a) failing to seek reasonable medical care for a child suffering from an apparent acute life-threatening condition;

(b) placing a child in the physical custody of another who the person knows has previously purposely or knowingly caused bodily injury to a child;

(c) placing a child in the physical custody of another who the person knows has previously committed an offense against the child under 45-5-502 or 45-5-503;

(d) manufacturing or distributing dangerous drugs in a place where a child is present;

(e) operating a motor vehicle under the influence of alcohol or dangerous drugs in violation of ~~61-8-401, 61-8-406, 61-8-410, or 61-8-465~~ [section 2] or committing aggravated driving under the influence as defined in [section 1] with a child in the vehicle; or

(f) failing to attempt to provide proper nutrition for a child, resulting in a medical diagnosis of nonorganic failure to thrive.

(2) A person may not be charged under subsection (1)(b) or (1)(c) if the person placed the child in the other person's custody pursuant to a court order.

(3) A person convicted of the offense of criminal child endangerment shall be fined an amount not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(4) For purposes of this section, "nonorganic failure to thrive" means inadequate physical growth that is a result of insufficient nutrition and is not secondary to a diagnosed medical condition."

Section 24. Section 46-16-130, MCA, is amended to read:

"**46-16-130. Pretrial diversion.** (1) (a) Prior to the filing of a charge, the prosecutor and a defendant who has counsel or who has voluntarily waived counsel may agree to the deferral of a prosecution for a specified period of time based on one or more of the following conditions:

(i) that the defendant may not commit any offense;

(ii) that the defendant may not engage in specified activities, conduct, and associations bearing a relationship to the conduct upon which the charge against the defendant is based;

(iii) that the defendant shall participate in a supervised rehabilitation program, which may include treatment, counseling, training, or education;

(iv) that the defendant shall make restitution in a specified manner for harm or loss caused by the offense; or

(v) any other reasonable conditions.

(b) The agreement must be in writing, must be signed by the parties, and must state that the defendant waives the right to speedy trial for the period of deferral. The agreement may include stipulations concerning the admissibility of evidence, specified testimony, or dispositions if the deferral of the prosecution is terminated and there is a trial on the charge.

(c) The prosecution must be deferred for the period specified in the agreement unless there has been a violation of its terms.

(d) The agreement must be terminated and the prosecution automatically dismissed with prejudice upon expiration and compliance with the terms of the agreement.

(2) A condition of pretrial diversion may be for the court to refer a defendant for evaluation to determine the appropriateness of proceedings pursuant to Title 53, chapter 21.

(3) Except as provided in 46-1-1104 and 46-1-1204, after a charge has been filed, a deferral of prosecution may be entered into only after the prosecutor provides notice to the court.

(4) A prosecution for a violation of ~~61-8-401, 61-8-406, 61-8-410, 61-8-411, or 61-8-465~~ [section 2] or aggravated driving under the influence as defined in [section 1] may not be deferred."

Section 25. Section 46-18-201, MCA, is amended to read:

"**46-18-201. Sentences that may be imposed.** (1) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition of sentence, except as otherwise specifically provided by statute, for a period:

(i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

(ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

(3) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

(i) a fine as provided by law for the offense;

(ii) payment of costs, as provided in 46-18-232, or payment of costs of assigned counsel as provided in 46-8-113;

(iii) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a state prison to be designated by the department of corrections;

(iv) commitment of:

(A) an offender not referred to in subsection (3)(a)(iv)(B) to the department of corrections with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended, except as provided in 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), and 45-5-625(4); or

(B) a youth transferred to district court under 41-5-206 and found guilty in the district court of an

offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;

(v) chemical treatment of sexual offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person;

(vi) commitment of an offender to the department of corrections with the requirement that immediately subsequent to sentencing or disposition the offender is released to community supervision and that any subsequent violation must be addressed as provided in 46-23-1011 through 46-23-1015; or

(vii) any combination of subsection (2) and this subsection (3)(a).

(b) A court may permit a part or all of a fine to be satisfied by a donation of food to a food bank program.

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose on the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) may include but are not limited to:

(a) limited release during employment hours as provided in 46-18-701;

(b) incarceration in a detention center not exceeding 180 days;

(c) conditions for probation;

(d) payment of the costs of confinement;

(e) payment of a fine as provided in 46-18-231;

(f) payment of costs as provided in 46-18-232 and 46-18-233;

(g) payment of costs of assigned counsel as provided in 46-8-113;

(h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available and that the offender is a suitable candidate, an order that the offender be placed in a chemical dependency treatment program, prerelease center, or prerelease program for a period not to exceed 1 year;

(j) community service;

(k) home arrest as provided in Title 46, chapter 18, part 10;

(l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

(m) participation in a day reporting program provided for in 53-1-203;

(n) participation in the 24/7 sobriety and drug monitoring program provided for in Title 44, chapter 4, part 12, for a violation of ~~61-8-465~~ aggravated driving under the influence as defined in [section 1], a ~~second or subsequent~~ violation of ~~61-8-401, 61-8-406, or 61-8-411~~ [section 2], or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime or for a violation of any statute involving domestic abuse or the abuse or neglect of a minor if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime regardless of whether the charge or conviction was for a first, second, or subsequent violation of the statute;

(o) participation in a restorative justice program approved by court order and payment of a participation fee of up to $150 for program expenses if the program agrees to accept the offender;

(p) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society;

(q) with approval of the program and confirmation by the department of corrections that space is available, an order that the offender be placed in a residential treatment program; or

(r) any combination of the restrictions or conditions listed in this subsection (4).

(5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended.

(6) (a) Except as provided in subsection (6)(b), in addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension of the license or driving privilege of the person must be

accomplished as provided in 61-5-214 through 61-5-217.

(b) A person's license or driving privilege may not be suspended due to nonpayment of fines, costs, or restitution.

(7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(8) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise.

(9) When imposing a sentence under this section that includes incarceration in a detention facility or the state prison, as defined in 53-30-101, the court shall provide credit for time served by the offender before trial or sentencing.

(10) As used in this section, "dangerous drug" has the meaning provided in 50-32-101."

Section 26. Section 46-18-236, MCA, is amended to read:

"**46-18-236. (Temporary) Imposition of charge upon conviction or forfeiture -- administration.** (1) Except as provided in subsection (2), there must be imposed by all courts of original jurisdiction on a person upon conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail a charge that is in addition to other taxable court costs, fees, or fines, as follows:

(a) $15 for each misdemeanor charge;

(b) the greater of $20 or 10% of the fine levied for each felony charge; and

(c) an additional $50 for each misdemeanor and felony charge under Title 45~~, 61-8-401, 61-8-406, or 61-8-411~~ or [section 2].

(2) If a convicting court determines under 46-18-231 and 46-18-232 that the person is not able to pay the fine and costs or that the person is unable to pay within a reasonable time, the court shall waive payment of the charge imposed by this section.

(3) The charges imposed by this section are not fines and must be imposed in addition to any fine and may not be used in determining the jurisdiction of any court.

(4) When the payment of a fine is to be made in installments over a period of time, the charges

imposed by this section must be collected from the first payment made and each subsequent payment as necessary if the first payment is not sufficient to cover the charges.

(5) The charges collected under subsection (1), except those collected under subsections (1)(a) and (1)(b) by a justice's court, must be deposited with the appropriate local government finance officer or treasurer. If a city municipal court or city or town court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the city or town finance officer or treasurer. If a district court or justice's court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the county finance officer or treasurer. If the court of original jurisdiction is a court within a consolidated city-county government within the meaning of Title 7, chapter 3, the charges collected under subsection (1) must be deposited with the finance officer or treasurer of the consolidated government.

(6) (a) A city or town finance officer or treasurer may retain the charges collected under subsections (1)(a) and (1)(b) by a city municipal court or a city or town court and may use that money for the payment of salaries of the city or town attorney and deputies.

(b) Each county finance officer or treasurer may retain the charges collected under subsections (1)(a) and (1)(b) by district courts for crimes committed or alleged to have been committed within that county. The county finance officer or treasurer shall use the money for the payment of salaries of its deputy county attorneys and for the payment of other salaries in the office of the county attorney, and any funds not needed for those salaries may be used for the payment of any other county salaries.

(7) (a) Except as provided in subsection (7)(b), each county, city, or town finance officer or treasurer may retain the charges collected under subsection (1)(c) for payment of the expenses of a victim and witness advocate program, including a program operated by a private, nonprofit organization, that provides the services specified in Title 40, chapter 15, and Title 46, chapter 24, and that is operated or used by the county, city, or town.

(b) The appropriate county, city, or town finance officer or treasurer shall deposit $1 of each charge collected under subsection (1)(c) in the collecting court's fund for mitigation of administrative costs incurred by the court in the collection of the charge. The funds deposited under this subsection (7)(b) are not subject to allocation under 46-18-251.

(c) Except as provided in subsection (7)(b), if the county, city, or town does not operate or use a

victim and witness advocate program, all charges collected under subsection (1)(c) must be paid to the crime victims compensation and assistance program in the department of justice for deposit in the account provided for in 53-9-113. (Terminates June 30, 2021--sec. 27, Ch. 285, L. 2015; sec. 1, Ch. 292, L. 2015.)

46-18-236. (Effective July 1, 2021) Imposition of charge upon conviction or forfeiture -- administration. (1) Except as provided in subsection (2), there must be imposed by all courts of original jurisdiction on a person upon conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail a charge that is in addition to other taxable court costs, fees, or fines, as follows:

(a) $15 for each misdemeanor charge;

(b) the greater of $20 or 10% of the fine levied for each felony charge; and

(c) an additional $50 for each misdemeanor and felony charge under Title 45~~, 61-8-401, 61-8-406, or 61-8-411~~ or [section 2].

(2) If a convicting court determines under 46-18-231 and 46-18-232 that the person is not able to pay the fine and costs or that the person is unable to pay within a reasonable time, the court shall waive payment of the charge imposed by this section.

(3) The charges imposed by this section are not fines and must be imposed in addition to any fine and may not be used in determining the jurisdiction of any court.

(4) When the payment of a fine is to be made in installments over a period of time, the charges imposed by this section must be collected from the first payment made and each subsequent payment as necessary if the first payment is not sufficient to cover the charges.

(5) The charges collected under subsection (1), except those collected under subsections (1)(a) and (1)(b) by a justice's court, must be deposited with the appropriate local government finance officer or treasurer. If a city municipal court or city or town court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the city or town finance officer or treasurer. If a district court or justice's court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the county finance officer or treasurer. If the court of original jurisdiction is a court within a consolidated city-county government within the meaning of Title 7, chapter 3, the charges collected under subsection (1) must be deposited with the finance officer or treasurer of the consolidated government.

(6) (a) A city or town finance officer or treasurer may retain the charges collected under subsections

(1)(a) and (1)(b) by a city municipal court or a city or town court and may use that money for the payment of salaries of the city or town attorney and deputies.

(b) Each county finance officer or treasurer may retain the charges collected under subsections (1)(a) and (1)(b) by district courts for crimes committed or alleged to have been committed within that county. The county finance officer or treasurer shall use the money for the payment of salaries of its deputy county attorneys and for the payment of other salaries in the office of the county attorney, and any funds not needed for those salaries may be used for the payment of any other county salaries.

(7) (a) Except as provided in subsection (7)(b), each county, city, or town finance officer or treasurer may retain the charges collected under subsection (1)(c) for payment of the expenses of a victim and witness advocate program, including a program operated by a private, nonprofit organization, that provides the services specified in Title 40, chapter 15, and Title 46, chapter 24, and that is operated or used by the county, city, or town.

(b) The appropriate county, city, or town finance officer or treasurer shall deposit $1 of each charge collected under subsection (1)(c) in the collecting court's fund for mitigation of administrative costs incurred by the court in the collection of the charge. The funds deposited under this subsection (7)(b) are not subject to allocation under 46-18-251.

(c) Except as provided in subsection (7)(b), if the county, city, or town does not operate or use a victim and witness advocate program, all charges collected under subsection (1)(c) must be paid to the crime victims compensation and assistance program in the department of justice for deposit in the state general fund to be used to provide services to crime victims as provided in Title 53, chapter 9, part 1."

Section 27. Section 50-46-320, MCA, is amended to read:

"**50-46-320. Limitations of act.** (1) This part does not permit:

(a) any individual, including a registered cardholder, to operate, navigate, or be in actual physical control of a motor vehicle, aircraft, or motorboat while under the influence of marijuana; or

(b) except as provided in subsection (3), the use of marijuana by a registered cardholder:

(i) in a health care facility as defined in 50-5-101;

(ii) in a school or a postsecondary school as defined in 20-5-402;

(iii) on or in any property owned by a school district or a postsecondary school;

(iv) on or in any property leased by a school district or a postsecondary school when the property is being used for school-related purposes;

(v) in a school bus or other form of public transportation;

(vi) when ordered by any court of competent jurisdiction into a correctional facility or program;

(vii) if a court has imposed restrictions on the cardholder's use pursuant to 46-18-202;

(viii) at a public park, public beach, public recreation center, or youth center;

(ix) in or on the property of any church, synagogue, or other place of worship;

(x) in plain view of or in a place open to the general public; or

(xi) where exposure to the marijuana smoke significantly adversely affects the health, safety, or welfare of children.

(2) A registered cardholder, provider, or marijuana-infused products provider may not cultivate marijuana or manufacture marijuana concentrates or marijuana-infused products for use by a registered cardholder in a manner that is visible from the street or other public area.

(3) A hospice or residential care facility licensed under Title 50, chapter 5, may adopt a policy that allows use of marijuana by a registered cardholder.

(4) Nothing in this part may be construed to require:

(a) a government medical assistance program, a group benefit plan that is covered by the provisions of Title 2, chapter 18, an insurer covered by the provisions of Title 33, or an insurer as defined in 39-71-116 to reimburse an individual for costs associated with the use of marijuana by a registered cardholder;

(b) an employer to accommodate the use of marijuana by a registered cardholder;

(c) a school or postsecondary school to allow a registered cardholder to participate in extracurricular activities; or

(d) a property owner to allow a tenant who is a registered cardholder, provider, marijuana-infused products provider, dispensary, or testing laboratory to cultivate, manufacture, dispense, sell, or test marijuana, marijuana concentrates, or marijuana-infused products or to allow a registered cardholder to use marijuana.

(5) Nothing in this part may be construed to:

(a) prohibit an employer from including in any contract a provision prohibiting the use of marijuana for

a debilitating medical condition; or

(b) permit a cause of action against an employer for wrongful discharge pursuant to 39-2-904 or discrimination pursuant to 49-1-102.

(6) Nothing in this part may be construed to allow a provider, marijuana-infused products provider, or employee of a licensee to use marijuana or to prevent criminal prosecution of a provider, marijuana-infused products provider, or employee of a licensee who uses marijuana or paraphernalia for personal use.

(7) (a) A law enforcement officer who has reasonable cause to believe that an individual with a valid registry identification card is driving under the influence of marijuana may apply for a search warrant to require the individual to provide a sample of the individual's blood for testing pursuant to the provisions of ~~61-8-405~~ [section 11]. An individual with a delta-9-tetrahydrocannabinol level of 5 ng/ml may be charged with a violation of ~~61-8-401or 61-8-411~~ [section 2(1)(a) or (1)(e)].

(b) A registered cardholder, provider, or marijuana-infused products provider who violates subsection (1)(a) is subject to revocation of the individual's registry identification card or license if the individual is convicted of or pleads guilty to any offense related to driving under the influence of alcohol or drugs when the initial offense with which the individual was charged was a violation of ~~61-8-401, 61-8-406, 61-8-410, or 61-8-411~~ [section 2]. A revocation under this section must be for the period of suspension or revocation set forth:

(i) in 61-5-208 for a violation of ~~61-8-401, 61-8-406, or 61-8-411~~ [section 2(1)(a), (1)(b), (1)(c), or (1)(d)]; or

(ii) in ~~61-8-410~~ [section 3(3)] for a violation of ~~61-8-410~~ [section 2(1)(e)].

(c) If an individual's registry identification card or license is subject to renewal during the revocation period, the individual may not renew the card until the full revocation period has elapsed. The card or license may be renewed only if the individual submits all materials required for renewal.

(8) A provider or marijuana-infused products provider who violates 15-64-103 or 15-64-104 is subject to revocation of the person's license from the date of the violation until a period of up to 1 year after the department of revenue certifies compliance with 15-64-103 or 15-64-104."

Section 28. Section 53-9-103, MCA, is amended to read:

"**53-9-103. Definitions.** As used in this part, the following definitions apply:

(1) "Claimant" means any of the following claiming compensation under this part:

(a) a victim;

(b) a dependent of a deceased victim; or

(c) an authorized person acting on behalf of any of them.

(2) "Collateral source" means a source of benefits, other than welfare benefits, or advantages for economic loss otherwise compensable under this part that the claimant has received or that is readily available to the claimant from:

(a) the offender;

(b) the government of the United States or any agency thereof, a state or any of its political subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them excess or secondary to benefits under this part;

(c) social security, medicare, and medicaid;

(d) workers' compensation;

(e) wage continuation programs of any employer;

(f) proceeds of a contract of insurance payable to the claimant for loss that was sustained because of the criminally injurious conduct;

(g) a contract, including an insurance contract, providing hospital and other health care services or benefits for disability. A contract in this state may not provide that benefits under this part are a substitute for benefits under the contract or that the contract is a secondary source of benefits and benefits under this part are a primary source.

(h) a crime victims compensation program operated by the state in which the victim was injured or killed that compensates residents of this state injured or killed in that state; or

(i) any other third party.

(3) "Criminally injurious conduct" means conduct that:

(a) occurs or is attempted in this state or an act of international terrorism, as defined in 18 U.S.C. 2331, committed outside of the United States against a resident of this state;

(b) results in bodily injury or death or involves domestic violence in a home where minor children were present; and

(c) is punishable by fine, imprisonment, or death or would be so punishable except that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state; however, criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle unless the bodily injury or death occurred during the commission of an offense defined in Title 45 that requires the mental state of purposely as an element of the offense or the injury or death was inflicted by the driver of a motor vehicle who is found by the office, by a preponderance of the evidence, to have been operating the motor vehicle while under the influence, as that term is defined in ~~61-8-401~~ [section 1]; or

(d) is committed in a state without a crime victims compensation program that covers a resident of this state if the conduct meets the requirements in subsections (3)(b) and (3)(c).

(4) "Dependent" means a natural person who is recognized under the law of this state to be wholly or partially dependent upon the victim for care or support and includes a child of the victim conceived before the victim's death but born after the victim's death, including a child that is conceived as a result of the criminally injurious conduct.

(5) "Office" means the office of victims services established in 2-15-2016.

(6) "Victim" means:

(a) a person who suffers bodily injury or death as a result of:

(i) criminally injurious conduct;

(ii) the person's good faith effort to prevent criminally injurious conduct; or

(iii) the person's good faith effort to apprehend a person reasonably suspected of engaging in criminally injurious conduct; or

(b) a minor child present in a home where domestic violence occurred."

Section 29. Section 61-1-101, MCA, is amended to read:

"**61-1-101. Definitions.** As used in this title, unless the context indicates otherwise, the following definitions apply:

(1) (a) "Authorized agent" means a person who has executed a written agreement with the department and is specifically authorized by the department to electronically access and update the department's motor vehicle titling, registration, or driver records, using an approved automated interface, for

specific functions or purposes on behalf of a third party.

(b) For purposes of this subsection (1), "person" means an individual, corporation, partnership, limited partnership, limited liability company, association, joint venture, state agency, local government unit, another state government, the United States, a political subdivision of this or another state, or any other legal or commercial entity.

(2) "Authorized agent agreement" means the written agreement executed between an authorized agent and the department that sets the technical and operational program standards, compliance criteria, payment options, and service expectations by which the authorized agent is required to operate in performing specific motor vehicle or driver-related record functions.

(3) "Autocycle" means a three-wheeled motorcycle that is equipped with safety belts, roll bars or roll hoops, a steering wheel, and seating that does not require the operator to straddle or sit astride it.

(4) "Bus" means a motor vehicle designed for carrying more than 10 passengers and used for the transportation of persons and any other motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(5) (a) "Business entity" means a corporation, association, partnership, limited liability partnership, limited liability company, or other legal entity recognized under state law.

(b) The term does not include an individual.

(6) (a) "Camper" means a structure designed to be mounted in the cargo area of a truck or attached to an incomplete vehicle for the purpose of providing shelter for persons. The term includes but is not limited to a cab-over, half cab-over, noncab-over, telescopic, and telescopic cab-over.

(b) The term does not include a truck canopy cover or topper.

(7) "CDLIS driver record" means the electronic record of a person's commercial driver's license status and history stored as part of the commercial driver's license system established under 49 U.S.C. 31309.

(8) "Certificate of title" means the paper record issued by the department or by the appropriate agency of another jurisdiction that establishes a verifiable record of ownership between an identified person or persons and the motor vehicle specifically described in the record and that provides notice of a perfected security interest in the motor vehicle.

(9) "Commercial driver's license" means:

(a) a driver's license issued under or granted by the laws of this state that authorizes a person to operate a class of commercial motor vehicle; or

(b) the privilege of a person to drive a commercial motor vehicle, whether or not the person holds a valid commercial driver's license.

(10) (a) "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:

(i) has a gross combination weight rating or a gross combination weight of 26,001 pounds or more, whichever is greater, inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;

(ii) has a gross vehicle weight rating or a gross vehicle weight of 26,001 pounds or more, whichever is greater;

(iii) is designed to transport at least 16 passengers, including the driver;

(iv) is a school bus; or

(v) is of any size and is used in the transportation of hazardous materials.

(b) The following vehicles are not commercial motor vehicles:

(i) an authorized emergency vehicle:

(A) equipped with audible and visual signals as required under 61-9-401 and 61-9-402; and

(B) operated when responding to or returning from an emergency call or operated in another official capacity;

(ii) a vehicle:

(A) controlled and operated by a farmer, family member of the farmer, or person employed by the farmer;

(B) used to transport farm products, farm machinery, or farm supplies to or from the farm within Montana within 150 miles of the farm or, if there is a reciprocity agreement with a state adjoining Montana, within 150 miles of the farm, including any area within that perimeter that is in the adjoining state; and

(C) not used to transport goods for compensation or for hire; or

(iii) a vehicle operated for military purposes by active duty military personnel, a member of the military reserves, a member of the national guard on active duty, including personnel on full-time national guard duty, personnel in part-time national guard training, and national guard military technicians, or active duty United

States coast guard personnel.

(c) For purposes of this subsection (10):

(i) "farmer" means a person who operates a farm or who is directly involved in the cultivation of land or crops or the raising of livestock owned by or under the direct control of that person;

(ii) "gross combination weight rating" means the value specified by the manufacturer as the loaded weight of a combination or articulated vehicle;

(iii) "gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of a single vehicle; and

(iv) "school bus" has the meaning provided in 49 CFR 383.5.

(11) "Commission" means the state transportation commission.

(12) "Custom-built motorcycle" means a motorcycle that is equipped with:

(a) an engine that was manufactured 20 years prior to the current calendar year and that has been altered from the manufacturer's original design; or

(b) an engine that was manufactured to resemble an engine 20 or more years old and that has been constructed in whole or in part from nonoriginal materials.

(13) "Custom vehicle" means a motor vehicle other than a motorcycle that:

(a) (i) was manufactured with a model year after 1948 and that is at least 25 years old; or

(ii) was built to resemble a vehicle manufactured after 1948 and at least 25 years before the current calendar year, including a kit vehicle intended to resemble a vehicle manufactured after 1948 and that is at least 25 years old; and

(b) has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

(14) "Customer identification number" means:

(a) a driver's license or identification card number when the customer is an individual who has been issued a driver's license or identification card by a state driver licensing authority;

(b) a federal employer or tax identification number when the customer is a business entity that has been issued a federal employer or tax identification number;

(c) the identification number assigned by the secretary of state to a business entity authorized to do

business in this state under Title 35 if the customer is a business entity that does not have a federal employer or tax identification number other than a social security number; or

(d) if the customer has not been issued one of the numbers described in subsections (14)(a) through (14)(c), a number assigned to the customer by the department when a transaction is initiated under this title.

(15) (a) "Dealer" means a person that, for commission or profit, engages in whole or in part in the business of buying, selling, exchanging, or accepting on consignment new or used motor vehicles, trailers, semitrailers, pole trailers, travel trailers, motorboats, sailboats, snowmobiles, off-highway vehicles, or special mobile equipment that is not registered in the name of the person.

(b) The term does not include the following:

(i) receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under a judgment or order of any court of competent jurisdiction;

(ii) employees of the persons included in subsection (15)(b)(i) when engaged in the specific performance of their duties as employees; or

(iii) public officers while performing or in the operation of their duties.

(16) "Declared weight" means the total unladen weight of a vehicle plus the weight of the maximum load to be carried on the vehicle as stated by the registrant in the application for registration.

(17) "Department" means the department of justice acting directly or through its duly authorized officers or agents.

(18) "Dolly or converter gear" means a device consisting of one or two axles with a fifth wheel and trailer tongue used to support the forward end of a semitrailer, converting a semitrailer into a trailer.

(19) "Domiciled" means a place where:

(a) an individual establishes residence;

(b) a business entity maintains its principal place of business;

(c) the business entity's registered agent maintains an address; or

(d) a business entity most frequently uses, dispatches, or controls a motor vehicle, trailer, semitrailer, or pole trailer that it owns or leases.

(20) "Downgrade" means the removal of a person's privilege to operate a commercial motor vehicle, as maintained by the department on the individual Montana driving record and the CDLIS driver record for that

person.

(21) "Driver" means a person who drives or is in actual physical control of a vehicle.

(22) "Driver's license" means a license or permit to operate a motor vehicle issued under or granted by the laws of this state, including:

(a) any temporary license or learner license;

(b) the privilege of any person to drive a motor vehicle, whether or not the person holds a valid license;

(c) any nonresident's driving privilege;

(d) a motorcycle endorsement; or

(e) a commercial driver's license.

(23) "Electric personal assistive mobility device" means a device that has two nontandem wheels, is self-balancing, and is designed to transport only one person with an electric propulsion system that limits the maximum speed of the device to 12 1/2 miles an hour.

(24) "For hire" means an action performed for remuneration of any kind, whether paid or promised, either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements from which a remuneration is obtained or derived for transportation service.

(25) (a) "Golf cart" means a motor vehicle that is designed for use on a golf course to carry a person or persons and golf equipment and that has an average speed of less than 15 miles per hour.

(b) Except as provided in 61-3-201, a golf cart is exempt from titling, registration, and mandatory liability insurance requirements under this title.

(26) "Gross vehicle weight" means the weight of a vehicle without load plus the weight of any load on the vehicle.

(27) "Hazardous material" means:

(a) any material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under 49 CFR, part 172; or

(b) any quantity of a material listed as a select agent or toxin in 42 CFR, part 73.

(28) "Highway" or "public highway" means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to the use of the public for

purposes of vehicular travel.

(29) "Highway patrol officer" means a state officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

(30) "Implement of husbandry" means a vehicle that is designed for agricultural purposes and exclusively used by the owner of the vehicle in the conduct of the owner's agricultural operations.

(31) "Kit vehicle" is a motor vehicle assembled from a manufactured kit either as:

(a) a complete kit, consisting of a prefabricated body and chassis, to construct a new motor vehicle; or

(b) a kit with a prefabricated body to be mounted to an existing motor vehicle chassis and drivetrain, commonly referred to as a donor vehicle.

(32) "Light vehicle" means a motor vehicle commonly referred to as an automobile, van, sport utility vehicle, or truck having a manufacturer's rated capacity of 1 ton or less.

(33) "Low-speed electric vehicle" means a motor vehicle, on or by which a person may be transported, that:

(a) has four wheels;

(b) has a maximum speed of at least 20 miles an hour and no greater than 40 miles an hour as certified by the manufacturer;

(c) is propelled by its own power, using an electric motor or other device that transforms stored electrical energy into the motion of the vehicle;

(d) stores electricity in batteries, ultracapacitors, or similar devices, which are charged from the power grid or from renewable electrical energy sources;

(e) has a wheelbase of 40 inches or greater and a wheel diameter of 10 inches or greater;

(f) exhibits a manufacturer's compliance with 49 CFR, part 565, or displays a 17-character vehicle identification number as provided in 49 CFR, part 565; and

(g) is equipped as provided in 61-9-432.

(34) "Low-speed restricted driver's license" means a license limited to the operation of a low-speed electric vehicle or a golf cart issued under or granted by the laws of this state, including:

(a) a temporary license or learner license;

(b) the privilege of a person to drive a low-speed electric vehicle or golf cart under the authority of 61-5-122, whether or not the person holds a valid driver's license; and

(c) a nonresident's similarly restricted driving privilege.

(35) "Manufactured home" has the meaning provided in 15-24-201.

(36) "Manufacturer" includes any person engaged in the manufacture of motor vehicles, trailers, semitrailers, pole trailers, travel trailers, motorboats, sailboats, snowmobiles, or off-highway vehicles as a regular business.

(37) "Manufacturer's certificate of origin" means the original paper record produced and issued by the manufacturer of a vehicle or, if in a medium authorized by the department, an electronic record created and transmitted by the manufacturer of a vehicle to the manufacturer's agent or a licensed dealer. The record must establish the origin of the vehicle specifically described in the record and, upon assignment, transfers of ownership of the vehicle to the person or persons named in the certificate.

(38) (a) "Medium-speed electric vehicle" is a motor vehicle, on or by which a person may be transported, that:

(i) has a maximum speed of 45 miles an hour as certified by the manufacturer;

(ii) is propelled by its own power, using an electric motor or other device that transforms stored electrical energy into the motion of the vehicle;

(iii) stores electricity in batteries, ultracapacitors, or similar devices, which are charged from the power grid or from renewable electrical energy sources;

(iv) is fully enclosed and includes at least one door for entry;

(v) has a wheelbase of 40 inches or greater and a wheel diameter of 10 inches or greater;

(vi) exhibits a manufacturer's compliance with 49 CFR, part 565, or displays a 17-character vehicle identification number as provided in 49 CFR, part 565;

(vii) bears a sticker, affixed by the manufacturer or dealer, on the left side of the rear window that indicates the vehicle's maximum speed rating; and

(viii) as certified by the manufacturer, is equipped as provided in 61-9-432.

(b) A medium-speed electric vehicle must be treated as a light vehicle for purposes of titling and registration under Title 61, chapter 3.

(c) A medium-speed electric vehicle may not have a gross vehicle weight in excess of 5,000 pounds.

(39) "Mobile home" or "housetrailer" has the meaning provided in 15-24-201.

(40) "Montana resident" means:

(a) an individual who resides in Montana as determined under 1-1-215; or

(b) for the purposes of chapter 3, a business entity that maintains a principal place of business or a registered agent in this state.

(41) (a) "Motorboat" means a vessel, including a personal watercraft or pontoon, propelled by any machinery, motor, or engine of any description, whether or not the machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines.

(b) The term does not include a vessel that has a valid marine document issued by the U.S. coast guard or any successor federal agency.

(42) (a) "Motor carrier" means a person or corporation or its lessees, trustees, or receivers appointed by a court that are operating motor vehicles on a public highway in this state for the transportation of property for hire on a commercial basis.

(b) The term does not include motor carriers regulated under Title 69, chapter 12.

(43) (a) "Motorcycle" means a motor vehicle that has a seat or saddle for the use of the operator and that is designated to travel on not more than three wheels in contact with the ground. A motorcycle may carry one or more attachments and a seat for the conveyance of a passenger.

(b) A motorcycle designed for use on highways is a motor vehicle unless otherwise prescribed.

(c) A motorcycle designed for off-road recreational use is an off-highway vehicle unless it has been modified to meet the equipment standards specified in chapter 9 and has been registered for highway use.

(d) The term includes an autocycle.

(e) The term does not include a tractor, a bicycle or a moped as defined in 61-8-102, a motorized nonstandard vehicle, or a two- or three-wheeled all-terrain vehicle that is used exclusively on private property.

(44) (a) "Motor-driven cycle" means a motorcycle, including a motor scooter, with a motor that produces 5 horsepower or less.

(b) The term does not include a bicycle or a moped, as defined in 61-8-102, or a motorized nonstandard vehicle.

(45) "Motor home" means a motor vehicle:

(a) designed to provide temporary living quarters, built as an integral part of or permanently attached to a self-propelled motor vehicle chassis or van;

(b) containing permanently installed independent life support systems that meet the ANSIA/A119.2 standard; and

(c) providing at least four of the following types of facilities:

(i) cooking, refrigeration, or icebox;

(ii) self-contained toilet;

(iii) heating or air conditioning, or both;

(iv) potable water supply, including a faucet and sink; or

(v) separate 110-volt or 125-volt electrical power supply or a liquefied petroleum gas supply, or both.

(46) (a) "Motorized nonstandard vehicle" means a vehicle, on or by which a person may be transported, that:

(i) is propelled by its own power, using an internal combustion engine or an electric motor;

(ii) has a wheelbase of less than 40 inches and a wheel diameter of less than 10 inches; and

(iii) does not display a manufacturer's certification in accordance with 49 CFR, part 567, or have a 17-character vehicle identification number assigned by the manufacturer in accordance with 49 CFR, part 565.

(b) The term includes but is not limited to a motorized skateboard and a vehicle commonly known as a "pocket rocket".

(c) The term does not include a moped as defined in 61-8-102, an electric personal assistive mobility device, or a motorized wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person.

(47) (a) "Motor vehicle" means:

(i) a vehicle propelled by its own power and designed or used to transport persons or property on the highways of the state;

(ii) a quadricycle if it is equipped for use on the highways as prescribed in chapter 9; or

(iii) a golf cart only if it is equipped for use on the highways as prescribed in chapter 9 and is operated pursuant to 61-8-391 or by a person with a low-speed restricted driver's license.

(b) The term does not include a bicycle or a moped as defined in 61-8-102, an electric personal assistive mobility device, a motorized nonstandard vehicle, or a motorized wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.

(48) "New motor vehicle" means a motor vehicle, regardless of the mileage of the vehicle, the legal or equitable title to which has never been transferred by a manufacturer, distributor, or dealer to another person as the result of a retail sale.

(49) "Nonresident" means a person who is not a Montana resident.

(50) (a) "Not used for general transportation purposes" means the operation of a motor vehicle registered as a collector's item, a custom vehicle, a street rod, or a custom-built motorcycle to or from a car or motorcycle club activity or event or an exhibit, show, cruise night, or parade, or for other occasional transportation activity.

(b) The term does not include operation of a motor vehicle for routine or ordinary household maintenance, employment, education, or other similar purposes.

(51) (a) "Off-highway vehicle" means a self-propelled vehicle designed for recreation or cross-country travel on public lands, trails, easements, lakes, rivers, or streams. The term includes but is not limited to motorcycles, quadricycles, dune buggies, amphibious vehicles, air cushion vehicles, and any other means of land transportation deriving motive power from any source other than muscle or wind.

(b) The term does not include:

(i) vehicles designed primarily for travel on, over, or in the water;

(ii) snowmobiles; or

(iii) motor vehicles designed to transport persons or property on the highways unless the vehicle is used for off-road recreation on public lands.

(52) "Operator" means a person who is in actual physical control of a motor vehicle.

(53) "Owner" means a person who holds the legal title to a vehicle. If a vehicle is the subject of an agreement for the conditional sale of the vehicle with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or in the event a vehicle is subject to a lease, contract, or other legal arrangement vesting right of possession or control,

for security or otherwise, or in the event a mortgagor of a vehicle is entitled to possession, then the owner is the person in whom is vested the right of possession or control.

(54) "Person" means an individual, corporation, partnership, association, firm, or other legal entity.

(55) "Personal watercraft" means a vessel that uses an outboard motor or an inboard engine powering a water jet pump as its primary source of propulsion and that is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than by the conventional method of sitting or standing in the vessel.

(56) "Pole trailer" means a vehicle without power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable generally of sustaining themselves as beams between the supporting connections.

(57) "Police officer" means an officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

(58) (a) "Quadricycle" means a four-wheeled motor vehicle, designed for on-road or off-road use, having a seat or saddle on which the operator sits.

(b) The term does not include golf carts.

(59) "Railroad" means a carrier of persons or property on cars, other than streetcars, operated on stationary rails.

(60) (a) "Railroad train" or "train" means a steam engine or electric or other motor, with or without cars coupled to the engine, that is operated on rails.

(b) The term does not include streetcars.

(61) "Recreational vehicle" includes a motor home, travel trailer, or camper.

(62) "Registration" or "register" means the act or process of creating an electronic record, maintained by the department, of the assignment of a license plate or a set of license plates to and the issuance of a registration decal for a specific vehicle, the ownership of which has been established or is presumed in department records.

(63) "Registration decal" means an adhesive sticker produced by the department and issued by the department, its authorized agent, or a county treasurer to the owner of a motor vehicle, trailer, semitrailer, pole trailer, motorboat, sailboat, personal watercraft, or snowmobile as proof of payment of all fees imposed for the

registration period indicated on the sticker as recorded by the department under 61-3-101.

(64) "Registration receipt" means a paper record that is produced and issued or, if authorized by the department, an electronic record that is transmitted by the department, its authorized agent, or a county treasurer to the owner of a vehicle that identifies a vehicle, based on information maintained in the electronic record of title for the vehicle, and that provides evidence of the payment of all fees required to be paid for the registration of the vehicle for the registration period indicated in the receipt.

(65) "Retail sale" means the sale of a motor vehicle, trailer, semitrailer, pole trailer, travel trailer, motorboat, snowmobile, off-highway vehicle, or special mobile equipment by a dealer to a person for purposes other than resale.

(66) "Revocation" means the termination by action of the department of a person's driver's license, privilege to drive a motor vehicle on the public highways, and privilege to apply for and be issued a driver's license for a period of time designated by law, during which the license or privilege may not be renewed, restored, or exercised. An application for a new license may be presented and acted on by the department after the expiration of the period of the revocation.

(67) "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event that a highway includes two or more separate roadways, the term refers to any roadway separately but not to all roadways collectively.

(68) (a) "Sailboat" means a vessel that uses a sail and wind as its primary source of propulsion.

(b) The term does not include a canoe or kayak propelled by wind.

(69) "School zone" means an area near a school beginning at the school's front door, encompassing the campus and school property, and including the streets directly adjacent to the school property and for as many blocks surrounding the school as determined by the local authority establishing a special speed limit under 61-8-310(1)(d).

(70) "Sell" means to transfer ownership from one person to another person or from a dealer to another person for consideration.

(71) "Semitrailer" means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that some part of its weight and that of its load rests on or is carried by another vehicle.

(72) "Snowmobile" means a self-propelled vehicle of an overall width of 48 inches or less, excluding accessories, that is designed primarily for travel on snow or ice, that may be steered by skis or runners, and that is not otherwise registered or licensed under the laws of the state of Montana.

(73) "Special mobile equipment" means a vehicle not designed for the transportation of persons or property on the highways but incidentally operated or moved over the highways, including road construction or maintenance machinery, ditch-digging apparatus, and well-boring apparatus. The fact that equipment is permanently attached to a vehicle does not make the vehicle special mobile equipment. The enumeration in this subsection is partial and does not exclude other vehicles that are within the general terms of this subsection.

(74) (a) "Specially constructed vehicle" means a motor vehicle, including a motorcycle, that:

(i) was not originally constructed under a distinctive make, model, or type by a generally recognized manufacturer of motor vehicles;

(ii) has been structurally modified so that it does not have the same appearance as similar vehicles from a generally recognized manufacturer of motor vehicles;

(iii) has been constructed or assembled entirely from custom-built parts and materials not obtained from other vehicles;

(iv) has been constructed or assembled by using major component parts from one or more manufactured vehicles and that cannot be identified as a specific make or model; or

(v) has been constructed by the use of a kit that cannot be visually identified as a specific make or model.

(b) The term does not include a motor vehicle that has been repaired or restored to its original design by replacing parts.

(75) (a) "Sport utility vehicle" means a light vehicle designed to transport 10 or fewer persons that is constructed on a truck chassis or that has special features for occasional off-road use.

(b) The term does not include trucks having a manufacturer's rated capacity of 1 ton or less.

(76) (a) "Stop", when required, means complete cessation from movement.

(b) "Stop", "stopping", or "standing", when prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the

directions of a police officer, highway patrol officer, or traffic control sign or signal.

(77) "Storage lot" means property owned, leased, or rented by a dealer that is not contiguous to the dealer's established place of business where a motor vehicle from the dealer's inventory may be placed when space at the dealer's established place of business is not available.

(78) "Street" means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to the use of the public for purposes of vehicular travel.

(79) "Street rod" means a motor vehicle, other than a motorcycle, that:

(a) was manufactured prior to 1949 or was built to resemble a vehicle manufactured before 1949, including a kit vehicle intended to resemble a vehicle manufactured before 1949; and

(b) has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

(80) "Suspension" means the temporary withdrawal by action of the department of a person's driver's license, privilege to drive a motor vehicle on the public highways, and privilege to apply for or be issued a driver's license for a period of time designated by law.

(81) "Temporary registration permit" means a paper record:

(a) issued by the department, an authorized agent, a county treasurer, or a person, using a department-approved electronic interface after an electronic record has been transmitted to the department, that contains:

(i) required vehicle and owner information; and

(ii) the purpose for which the record was generated; and

(b) that, when placed in a durable license-plate style plastic pouch approved by the department and displayed as prescribed in 61-3-224, authorizes a person to operate the described motor vehicle, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for:

(i) 40 days from the date the record is issued or until the vehicle is registered under Title 23 or this title, whichever first occurs; or

(ii) 90 days from the date the record is issued for a permit issued pursuant to 61-3-303(3)(b).

(82) "Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highways for purposes of travel.

(83) (a) "Trailer" means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that no part of its weight rests on the towing vehicle.

(b) The term does not include a mobile home or a manufactured home, as defined in 15-1-101.

(84) "Transaction summary receipt" means an electronic record produced and issued by the department, its authorized agent, or a county treasurer for which a paper receipt is issued. The record may be created by the department and transmitted to the owner of a vehicle, a secured party, or a lienholder. The record must contain a unique transaction record number and summarize and verify the electronic filing of the transaction described in the receipt on the electronic record of title maintained under 61-3-101.

(85) "Travel trailer" means a vehicle:

(a) that is 40 feet or less in length;

(b) that is of a size or weight that does not require special permits when towed by a motor vehicle;

(c) with gross trailer area of less than 320 square feet; and

(d) that is designed to provide temporary facilities for recreational, travel, or camping use and not used as a principal residence.

(86) "Truck" or "motortruck" means a motor vehicle designed, used, or maintained primarily for the transportation of property.

(87) "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load drawn.

(88) "Under the influence" has the meaning provided in ~~61-8-401~~ [section 1].

(89) "Used motor vehicle" includes any motor vehicle that has been sold, bargained, exchanged, or given away or had its title transferred from the person who first took title to it from the manufacturer, importer, dealer, wholesaler, or agent of the manufacturer or importer and that has been used so as to have become what is commonly known as "secondhand" within the ordinary meaning of that term.

(90) "Van" means a motor vehicle designed for the transportation of at least six persons and not more than nine persons and intended for but not limited to family or personal transportation without compensation.

(91) (a) "Vehicle" means a device in, on, or by which any person or property may be transported or drawn on a public highway, except devices moved by animal power or used exclusively on stationary rails or

tracks.

(b) The term does not include a manually or mechanically propelled wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.

(92) "Vehicle identification number" means the number, letters, or combination of numbers and letters assigned by the manufacturer, by the department, or in accordance with the laws of another state or country for the purpose of identifying the motor vehicle or a component part of the motor vehicle.

(93) "Vessel" means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

(94) "Wholesaler" means a person that for a commission or with intent to make a profit or gain of money or other thing of value sells, exchanges, or attempts to negotiate a sale or exchange of an interest in a used motor vehicle, trailer, semitrailer, pole trailer, travel trailer, motorboat, snowmobile, off-highway vehicle, or special mobile equipment only to dealers and auto auctions licensed under chapter 4, part 1."

Section 30. Section 61-2-107, MCA, is amended to read:

"**61-2-107. License reinstatement fee to fund county drinking and driving prevention programs.** (1) Notwithstanding the provisions of any other law of the state, a driver's license that has been suspended or revoked under 61-5-205 or ~~61-8-402~~ [section 8] must remain suspended or revoked until the driver has paid to the department a fee of $200 in addition to any other fines, forfeitures, and penalties assessed as a result of conviction for a violation of the traffic laws of the state.

(2) The department shall deposit one-half of the fees collected under subsection (1) in the general fund and the other half in an account in the state special revenue fund to be used for funding county drinking and driving prevention programs as provided in 61-2-108."

Section 31. Section 61-2-302, MCA, is amended to read:

"**61-2-302. Establishment of driver rehabilitation and improvement program -- participation by offending drivers.** (1) The department may establish by administrative rule a driver rehabilitation and improvement program or programs. The programs may consist of electronic or classroom instruction in rules of

the road, driving techniques, defensive driving, driver attitudes and habits, actual on-the-road driver's training, and other subjects or tasks designed to contribute to proper driving attitudes, habits, and techniques and must include the requirements for obtaining a restricted probationary driver's license.

(2) Except when otherwise provided or restricted by statute, a person whose driver's license is suspended or revoked by the department, unless the suspension or revocation was for an offense under ~~61-8-401, 61-8-406, or 61-8-411~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)], may participate in any driver rehabilitation and improvement program established under this section if the person's license is:

(a) suspended as a result of a violation of the traffic laws of this state, unless the suspension was imposed under the authority provided in Title 61, chapter 8, part 8; or

(b) revoked and the person has:

(i) completed at least 3 months of a 1-year revocation; or

(ii) completed 1 year of a 3-year revocation; and

(iii) met the requirements for reobtaining a Montana driver's license.

(3) Notwithstanding any provision of this part inconsistent with any other law of the state of Montana, the enforcement of any suspension or revocation order that constitutes the basis for any person's participation in the driver rehabilitation and improvement program provided for in this section may be stayed if that person complies with the requirements established for the driver rehabilitation and improvement program and meets the eligibility requirements of subsection (2).

(4) If a person's driver's license has been surrendered before the person's selection for participation in the driver rehabilitation and improvement program, the license may be returned upon receipt of the person's agreement to participate in the program.

(5) The stay of enforcement of any suspension or revocation action must be terminated and the suspension or revocation action must be reinstated if a person declines to participate in the driver rehabilitation and improvement program or fails to meet the attendance or other requirements established for participation in the program.

(6) This part does not create a right to be included in any program established under this part.

(7) The department may establish a schedule of fees that may be charged to those persons participating in the driver improvement and rehabilitation program. The fees must be used to help defray costs

of maintaining the program.

(8) A person may be referred to this program by a driver improvement analyst, city judge, justice of the peace, youth court judge, or judge of a district court of the state.

(9) (a) Except as provided in subsection (9)(b), the department may issue a restricted probationary license to any person who enrolls and participates in the driver rehabilitation and improvement program. Upon issuance of a probationary license under this section, the licensee is subject to the restrictions set forth on the license.

(b) The department may not issue a restricted probationary license that would permit an individual to drive a commercial motor vehicle during a period in which:

(i) the individual is disqualified from operating a commercial motor vehicle under state or federal law; or

(ii) the individual's driver's license or driving privilege is revoked, suspended, or canceled.

(10) It is a misdemeanor for a person to operate a motor vehicle in any manner in violation of the restrictions imposed on a restricted license issued to the person under this section."

Section 32. Section 61-5-205, MCA, is amended to read:

"**61-5-205. Mandatory revocation or suspension of license upon certain convictions -- duration of action -- exceptions.** (1) The department shall revoke an individual's driver's license or driving privilege if the department receives notice from a court or another licensing jurisdiction that the individual has been convicted of any of the following offenses:

(a) negligent homicide resulting from the operation of a motor vehicle;

(b) any felony in the commission of which a motor vehicle is used;

(c) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

(d) perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of motor vehicles;

(e) fleeing from or eluding a peace officer; or

(f) negligent vehicular assault as defined in 45-5-205 involving a motor vehicle.

(2) The department shall suspend an individual's driver's license or driving privilege if the department receives notice from a court or another licensing jurisdiction that the individual has been convicted of any of the following offenses:

(a) a driving offense under ~~61-8-401, 61-8-406, or 61-8-411~~ [section 2];

(b) three reckless driving offenses committed within a period of 12 months; or

(c) a theft offense under 45-6-301 if the theft consisted of theft of motor vehicle fuel and a motor vehicle was used in the commission of the offense.

(3) A revocation under subsections (1)(a), (1)(b), and (1)(d) through (1)(f) must be for a period of 1 year. A revocation under subsection (1)(c) must be for a period of 2 years if the offender received a felony conviction under 61-7-103.

(4) (a) Except as provided in subsections (4)(b) and (4)(c), a suspension under subsection (2) must be for a period of 1 year.

(b) A suspension under subsection (2)(a) must be for the period set forth in 61-5-208.

(c) A suspension under subsection (2)(c) must be for one of the following periods:

(i) 30 days for a first offense;

(ii) 6 months for a second offense; and

(iii) 1 year for a third or subsequent offense."

Section 33. Section 61-5-208, MCA, is amended to read:

"**61-5-208. Period of suspension or revocation -- limitation on issuance of probationary license -- notation on driver's license.** (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways, except as permitted by law.

(2) (a) Except as provided in 44-4-1205 and 61-2-302 and except as otherwise provided in this section, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored until the revocation or suspension period has been completed.

(b) Subject to 61-5-231 and except as provided in subsection (4) of this section:

(i) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a

first offense of violating ~~61-8-401, 61-8-406, 61-8-411, or 61-8-465~~ [section 2], the department shall suspend the driver's license or driving privilege of the person for a period of 6 months;

(ii) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a second offense of violating ~~61-8-401, 61-8-406, 61-8-411, or 61-8-465~~ [section 2] within the time period specified in ~~61-8-734~~ [section 2], the department shall suspend the driver's license or driving privilege of the person for a period of 1 year and may not issue a probationary license during the period of suspension unless the person completes at least 45 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a probationary driver's license be issued subject to the requirements of ~~61-8-442~~ [section 6]. If the 1-year suspension period passes and the person has not completed chemical dependency treatment, as required under ~~61-8-732~~ [section 2], the license suspension remains in effect until treatment is completed.

(iii) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a third or subsequent offense of violating ~~61-8-401, 61-8-406, 61-8-411, or 61-8-465~~ [section 2] within the time period specified in ~~61-8-734~~ [section 2], the department shall suspend the driver's license or driving privilege of the person for a period of 1 year and may not issue a probationary license during the period of suspension unless the person completes at least 90 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a probationary driver's license be issued subject to the requirements of ~~61-8-442~~ [section 6]. If the 1-year suspension period passes and the person has not completed chemical dependency treatment, as required under ~~61-8-732~~ [section 2], the license suspension remains in effect until treatment is completed.

(3) (a) Except as provided in subsection (3)(b), the period of suspension or revocation for a person convicted of any offense that makes mandatory the suspension or revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

(b) A suspension commences from the last day of the prior suspension or revocation period if the suspension is for a conviction of driving with a suspended or revoked license.

(4) If a person is convicted of a violation of ~~61-8-401, 61-8-406, 61-8-411, or 61-8-465~~ [section 2] while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802.

(5) (a) A driver's license that is issued after a license revocation to a person described in subsection (5)(b) must be clearly marked with a notation that conveys the term of the person's probation restrictions.

(b) The provisions of subsection (5)(a) apply to a license issued to a person for whom a court has reported a felony conviction under ~~61-8-731~~ [section 4], the judgment for which has as a condition of probation that the person may not operate a motor vehicle unless:

(i) operation is authorized by the person's probation officer; or

(ii) a motor vehicle operated by the person is equipped with an ignition interlock device."

Section 34. Section 61-5-212, MCA, is amended to read:

"**61-5-212. Driving while license suspended or revoked -- penalty -- second offense of driving without licensing exemption.** (1) (a) A person commits the offense of driving a motor vehicle without statutory exemption or during a suspension or revocation period if the person drives:

(i) a motor vehicle on any public highway of this state at a time when the person's privilege to drive or apply for and be issued a driver's license is suspended or revoked in this state or any other state unless the person has obtained a restricted-use driving permit under 61-5-232;

(ii) a commercial motor vehicle while the person's commercial driver's license is revoked, suspended, or canceled in this state or any other state or the person is disqualified from operating a commercial motor vehicle or from obtaining a commercial driver's license; or

(iii) a motor vehicle on any public highway of this state without proof of a statutory exemption, as provided in 61-5-104.

(b) (i) A person convicted of the offense of driving a motor vehicle without proof of a statutory exemption for the second time shall be punished by imprisonment for not less than 2 days or more than 6 months and may be fined not more than $500.

(ii) Except as provided in subsection (1)(b)(iii), a person convicted of the offense of driving during a suspension or revocation period shall be fined an amount not to exceed $500 or be imprisoned for a term of not more than 6 months, or both.

(iii) If the reason for the suspension or revocation was that the person was convicted of a violation of ~~61-8-401, 61-8-406, or 61-8-411~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] or a similar offense under the

laws of any other state or the suspension was under ~~61-8-402 or 61-8-409~~ [section 8] or a similar law of any other state for refusal to take a test for alcohol or drugs requested by a peace officer who believed that the person might be driving under the influence, the person shall be imprisoned for a term of not less than 2 days or more than 6 months or be fined an amount not to exceed $2,000, or both, and in addition, the court may order the person to perform up to 40 hours of community service.

(2) (a) Upon receiving a record of the conviction of any person under this section upon a charge of driving a noncommercial vehicle while the person's driver's license, privilege to drive, or privilege to apply for and be issued a driver's license was suspended or revoked, the department shall extend the period of suspension or revocation for an additional 1-year period.

(b) Upon receiving a record of the conviction of any person under this section upon a charge of driving a commercial motor vehicle while the person's commercial driver's license was revoked, suspended, or canceled or the person was disqualified from operating a commercial motor vehicle under federal regulations, the department shall suspend the person's commercial driver's license in accordance with 61-8-802."

Section 35. Section 61-5-218, MCA, is amended to read:

"**61-5-218. License reinstatement fee following license suspension or revocation.** (1) Except as provided in subsection (2), a person whose driver's license, other than a commercial driver's license, or driving privilege has been suspended or revoked shall pay a reinstatement fee of $100 to the department to have the driver's license or driving privilege reinstated.

(2) (a) A person whose driver's license or driving privilege was suspended or revoked under 61-5-205 or ~~61-8-402~~ [section 8] shall pay a reinstatement fee as required by 61-2-107.

(b) A driver's license or driving privilege that was suspended or revoked under 61-5-207 must be reinstated without payment of a reinstatement fee.

(c) The reinstatement fee required under subsection (1) must be waived by the department when a court notifies the department that the person has satisfied the requirements of 61-5-214(2) and the court has determined that the person is indigent under the standards set forth in 47-1-111.

(3) The department shall deposit the fees collected under subsection (1) in the general fund."

Section 36. Section 61-5-231, MCA, is amended to read:

"**61-5-231. Authorization of probationary license by DUI court ~~-- definition~~.** (1) If a person convicted of a second or subsequent misdemeanor offense of driving under the influence of alcohol or drugs under ~~61-8-401 or 61-8-411~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)], driving with excessive alcohol concentration under ~~61-8-406~~ [section 2], or aggravated driving under the influence ~~under 61-8-465~~ as defined in [section 1] is participating in a DUI court as defined in [section 1], the court may, in the court's discretion, authorize a probationary driver's license for the participant subject to ~~61-8-442~~ [section 6] and any other conditions imposed within the scope of the court's authority.

(2) If the participant fails to comply with the court's conditions, the court may revoke the probationary driver's license and impose a driver's license suspension for the time period established pursuant to 61-5-208 commencing from the date of the court's revocation of the probationary license.

~~(3) For purposes of this section, "DUI court" means any court that has established a special docket for handling cases involving persons charged with violations under 61-8-401, 61-8-406, 61-8-411, or 61-8-465 and that implements a program of incentives and sanctions intended to assist a participant in completing treatment ordered pursuant to 61-8-732 and ending the participant's criminal behavior associated with driving under the influence of alcohol or drugs or with excessive alcohol concentration.~~"

Section 37. Section 61-5-405, MCA, is amended to read:

"**61-5-405. Offenses furnishing ground for suspension or revocation of license -- return to licensing jurisdiction of abstracts of court records and reports of conviction.** (1) Items enumerated in Article IV(1), subsections (a), (b), (c), and (d), of 61-5-401 refer specifically to 45-5-103, 45-5-104, ~~61-8-401~~ [section 2], the definition of felony as provided in 45-2-101, and 61-7-105, respectively.

(2) In addition to convictions mentioned in subsection (1), the department, for the purpose of suspension, revocation, or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported as it would if the conduct had occurred in this state for:

(a) convictions of perjury or the making of a false affidavit relating to the ownership or operation of a motor vehicle (61-5-303);

(b) three convictions of reckless driving committed within a period of 12 months (61-8-301); or

(c) convictions of careless driving resulting in death or reckless driving resulting in death.

(3) Court abstracts or reports of conviction received by the department that name an individual licensed in another jurisdiction must be forwarded to the jurisdiction of licensure. The department may not take action against the driver's license or driving privilege of the individual as may be required elsewhere in this title."

Section 38. Section 61-8-101, MCA, is amended to read:

"**61-8-101. Application -- exceptions.** (1) As used in this chapter, "ways of this state open to the public" means any highway, road, alley, lane, parking area, or other public or private place adapted and fitted for public travel that is in common use by the public.

(2) The provisions of this chapter relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except:

(a) where a different place is specifically referred to in a given section;

(b) the provisions of 61-8-301 and ~~61-8-401(1)(b), (1)(c), and (2)~~ [section 2(1) and (2)], with regard to operating a vehicle while under the influence of drugs, apply anywhere within this state;

(c) the provisions of 61-8-301 and ~~61-8-401 except subsections (1)(b), (1)(c), and (2) thereof, 61-8-402 through 61-8-405, and 61-8-465~~ [section 2], except under the influence of a dangerous drug and [section 2(2)], with regard to operating a vehicle while under the influence of alcohol, apply upon all ways of this state open to the public.

(3) The operation of motor vehicles directly across the public roads and highways of this state, especially as required in the transportation of natural resource products, including agricultural products and livestock, shall not be considered to be the operation of such vehicles on the public roads and highways of this state or on ways of this state open to the public, provided that such crossings are adequately marked with warning signs or devices. Such crossings are subject to provisions relating to stopping before entry and to restoration of any damage as may reasonably be prescribed by the state or local agency in control of safety of operation of the public highway involved."

Section 39. Section 61-8-102, MCA, is amended to read:

"**61-8-102. Uniformity of interpretation -- definitions.** (1) Interpretation of this chapter in this state

must be as consistent as possible with the interpretation of similar laws in other states.

(2) As used in this chapter, unless the context requires otherwise, the following definitions apply:

(a) "Authorized emergency vehicle" means a vehicle of a governmental fire agency organized under Title 7, chapter 33, an ambulance, or an emergency vehicle designated or authorized by the department.

(b) "Bicycle" means a vehicle propelled solely by human power on which any person may ride, irrespective of the number of wheels, except scooters, wheelchairs, and similar devices. The term includes an electrically assisted bicycle.

(c) "Bicycle trailer" means a device with one or more wheels that is designed to be towed by a bicycle.

(d) "Business district" means the territory contiguous to and including a highway when within any 600 feet along a highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, office buildings, railroad stations, and public buildings that occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of the highway.

(e) "Controlled-access highway" means a highway, street, or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the highway, street, or roadway except at the points and in the manner as determined by the public authority having jurisdiction over the highway, street, or roadway.

(f) "Crosswalk" means:

(i) that part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway; or

(ii) any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrians crossing by lines or other markings on the surface.

(g) "Electrically assisted bicycle" means a vehicle on which a person may ride that has two tandem wheels and an electric motor capable of propelling the vehicle and a rider who weighs 170 pounds no faster than 20 miles an hour on a paved, level surface.

(h) "Flag person" means a person who directs, controls, or alters the normal flow of vehicular traffic on a street or highway as a result of a vehicular traffic hazard then present on that street or highway. This person, except a uniformed traffic enforcement officer exercising the officer's duty as a result of a planned vehicular

traffic hazard, must be equipped as required by the rules of the department of transportation.

(i) "Highway" has the meaning provided in 61-1-101, but includes ways that have been or are later dedicated to public use.

(j) "Ignition interlock device" means ignition equipment that:

(i) analyzes the breath to determine blood alcohol concentration;

(ii) is approved by the department pursuant to ~~61-8-441~~ [section 13]; and

(iii) is designed to prevent a motor vehicle from being operated by a person who has consumed a specific amount of an alcoholic beverage.

(k) (i) "Intersection" means the area embraced within the prolongation or connection of the lateral curb lines or if there are no curb lines then the lateral boundary lines of the roadways of two highways that join one another at or approximately at right angles or the area within which vehicles traveling on different highways joining at any other angle may come in conflict.

(ii) When a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of the divided highway by an intersecting highway must be regarded as a separate intersection. If the intersecting highways also include two roadways 30 feet or more apart, then every crossing of two roadways of the highways must be regarded as a separate intersection.

(l) "Laned roadway" means a roadway that is divided into two or more clearly marked lanes for vehicular traffic.

(m) "Local authorities" means every county, municipal, and other local board or body having authority to enact laws relating to traffic under the constitution and laws of this state.

(n) "Moped" means a vehicle equipped with two or three wheels, foot pedals to permit muscular propulsion, and an independent power source providing a maximum of 2 brake horsepower. The power source may not be capable of propelling the device, unassisted, at a speed exceeding 30 miles an hour on a level surface. The device must be equipped with a power drive system that functions directly or automatically only and does not require clutching or shifting by the operator after the drive system is engaged.

(o) "Noncommercial motor vehicle" or "noncommercial vehicle" means any motor vehicle or combination of motor vehicles that is not included in the definition of commercial motor vehicle in 61-1-101 and includes but is not limited to the vehicles listed in 61-1-101(10)(b).

(p) "Official traffic control devices" means all signs, signals, markings, and devices not inconsistent with this title that are placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic.

(q) "Pedestrian" means any person on foot or any person in a manually or mechanically propelled wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person.

(r) "Police vehicle" means a vehicle used in the service of any law enforcement agency.

(s) "Private road" or "driveway" means a way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

(t) "Residence district" means the territory contiguous to and including a highway not comprising a business district when the property on the highway for a distance of 300 feet or more is primarily improved with residences or residences and buildings in use for business.

(u) "Right-of-way" means the privilege of the immediate use of the roadway.

(v) "Roadway" means the portion of a highway that is improved, designed, or ordinarily used for vehicular travel, including the paved shoulder.

(w) "School bus" has the meaning provided in 20-10-101.

(x) "Sidewalk" means the portion of a street that is between the curb lines or the lateral lines of a roadway and the adjacent property lines and that is intended for use by pedestrians.

(y) "Traffic control signal" means a device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed.

(z) "Urban district" means the territory contiguous to and including any street that is built up with structures devoted to business, industry, or dwelling houses situated at intervals of less than 100 feet for a distance of one-fourth mile or more."

Section 40. Section 61-8-805, MCA, is amended to read:

"**61-8-805. Suspension for operating commercial vehicle with alcohol concentration of 0.04 or more -- hearing.** (1) A person whose alcohol concentration is 0.04 or more while the person drives or is in actual physical control of a commercial motor vehicle is subject to the suspension of the person's commercial

driver's license. The peace officer who determines that the person is operating a commercial motor vehicle with an alcohol concentration of 0.04 or more shall immediately seize the person's commercial driver's license and, on behalf of the department, give the person written notice of the license suspension and the right to a hearing under 61-8-808. Upon receipt of a report certified under penalty of law from the peace officer that the person was operating a commercial motor vehicle with an alcohol concentration of 0.04 or more, the department shall suspend the license, with no provision for a restricted probationary commercial license, for:

(a) 1 year, upon receipt of the first report of a 0.04 or more alcohol concentration violation, except that if the violation occurred in a commercial motor vehicle transporting placardable hazardous materials, the suspension must be for 3 years; and

(b) life, upon receipt of a second or subsequent 0.04 or more alcohol concentration violation report at any time as determined from the records of the department, subject to federal rules allowing for driver rehabilitation and license reinstatement, if otherwise eligible, upon service of a minimum period of 10 years' suspension.

(2) A peace officer who determines that a commercial motor vehicle operator has a measured amount or detected presence of alcohol in the operator's body while operating a commercial motor vehicle shall place the commercial motor vehicle operator out of service as mandated by federal regulations for 24 hours.

(3) The fact that a person charged with a violation of the provisions of subsection (1) is entitled to use alcohol under the laws of Montana is not a defense against a charge of violating the provisions of subsection (1).

(4) For purposes of this section, a conviction for violation of ~~61-8-401 or 61-8-406~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] while operating a commercial motor vehicle or a prior refusal to be tested under an implied consent law must be treated as a prior report of a 0.04 or more alcohol concentration violation and must be used in determining the length of the license suspension under subsection (1)."

Section 41. Section 61-8-807, MCA, is amended to read:

"**61-8-807. Administration of tests.** Tests required under this part must be administered as provided in ~~61-8-405~~ [section 11]."

Section 42. Section 61-11-101, MCA, is amended to read:

"**61-11-101. Report of convictions and suspension or revocation of driver's licenses -- surrender of licenses.** (1) If a person is convicted of an offense for which chapter 5 or chapter 8, part 8, makes mandatory the suspension or revocation of the driver's license or commercial driver's license of the person by the department, the court in which the conviction occurs shall require the surrender to it of all driver's licenses then held by the convicted person. The court shall, within 5 days after the conviction, forward the license and a record of the conviction to the department. If the person does not possess a driver's license, the court shall indicate that fact in its report to the department.

(2) A court having jurisdiction over offenses committed under a statute of this state or a municipal ordinance regulating the operation of motor vehicles on highways, except for standing or parking statutes or ordinances, shall forward a record of the conviction, as defined in 61-5-213, to the department within 5 days after the conviction. The court may recommend that the department issue a restricted probationary license on the condition that the individual comply with the requirement that the person attend and complete a chemical dependency education course, treatment, or both, as ordered by the court under ~~61-8-732~~ [section 5].

(3) A court or other agency of this state or of a subdivision of the state that has jurisdiction to take any action suspending, revoking, or otherwise limiting a license to drive shall report an action and the adjudication upon which it is based to the department within 5 days on forms furnished by the department.

(4) (a) On a conviction referred to in subsection (1) of a person who holds a commercial driver's license or who is required to hold a commercial driver's license, a court may not take any action, including deferring imposition of judgment, that would prevent a conviction for any violation of a state or local traffic control law or ordinance, except a parking law or ordinance, in any type of motor vehicle, from appearing on the person's driving record. The provisions of this subsection (4)(a) apply only to the conviction of a person who holds a commercial driver's license or who is required to hold a commercial driver's license and do not apply to the conviction of a person who holds any other type of driver's license.

(b) For purposes of this subsection (4), "who is required to hold a commercial driver's license" refers to a person who did not have a commercial driver's license but who was operating a commercial motor vehicle at the time of a violation of a state or local traffic control law or ordinance resulting in a conviction referred to in subsection (1).

(5) (a) If a person who holds a valid registry identification card or license issued pursuant to 50-46-307 or 50-46-308 is convicted of or pleads guilty to any offense related to driving under the influence of alcohol or drugs when the initial offense with which the person was charged was a violation of ~~61-8-401, 61-8-406, 61-8-410, or 61-8-411~~ [section 2], the court in which the conviction occurs shall require the person to surrender the registry identification card or license.

(b) Within 5 days after the conviction, the court shall forward the registry identification card and a copy of the conviction to the department of public health and human services."

Section 43. Section 67-1-211, MCA, is amended to read:

"**67-1-211. Alcohol concentration standards -- evidence admissible -- administration of tests.** (1) If a person acting or attempting to act as a crewmember of an aircraft has an alcohol concentration, as defined in [section 1] of 0.04% by weight or more ~~as defined in 61-8-407~~, it may be inferred that the person is under the influence of alcohol and is in violation of 67-1-204.

(2) Evidence of any measured amount or detected presence of alcohol in the person at the time of the act alleged under subsection (1) and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204.

(3) In any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204, the court or jury may consider federal regulations governing aeronautics.

(4) A person who operates an aircraft over the lands and waters of this state is considered to have given consent to a test of the person's blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol in the person's body if arrested by a peace officer for operating, attempting to operate, or being in actual physical control of an aircraft while under the influence of alcohol, drugs, or a combination of the two. The test must be administered at the direction of a peace officer who has reasonable grounds to believe the person was operating, attempting to operate, or in actual physical control of an aircraft while under the influence of alcohol, drugs, or a combination of the two. The arresting officer may designate which of the tests must be administered. A person who is unconscious or who is otherwise in a

condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by this subsection.

(5) If a person charged with a violation of 67-1-204 refuses to submit to a test of the person's blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol in the person's body, a test will not be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204.

(6) The provisions relating to administration of tests provided in ~~61-8-405~~ [section 11] and the definition of alcohol concentration provided in ~~61-8-407~~ [section 1] apply to any testing done to determine any measured amount or detected presence of alcohol in a person and the alcohol concentration of a person charged with violation of 67-1-204."

Section 44. Repealer. The following sections of the Montana Code Annotated are repealed:

61-8-401. Driving under influence of alcohol or drugs -- definitions.

61-8-402. Implied consent -- blood or breath tests for alcohol, drugs, or both -- refusal to submit to test -- administrative license suspension.

61-8-403. Right of appeal to court.

61-8-404. Evidence admissible -- conditions of admissibility.

61-8-405. Administration of tests.

61-8-406. Operation of noncommercial vehicle by person with alcohol concentration of 0.08 or more -- operation of commercial vehicle by person with alcohol concentration of 0.04 or more.

61-8-407. Definition of alcohol concentration.

61-8-408. Multiple convictions prohibited.

61-8-409. Preliminary alcohol screening test.

61-8-410. Operation of vehicle by person under 21 years of age with alcohol concentration of 0.02 or more.

61-8-411. Operation of noncommercial vehicle or commercial vehicle by person under influence of delta-9-tetrahydrocannabinol.

61-8-421. Forfeiture procedure.

61-8-422. Prohibition on transfer, sale, or encumbrance of vehicles subject to forfeiture -- penalty.

61-8-440. Ignition interlock device -- assisting in starting and operating -- circumventing -- penalty.

61-8-441. Department rules regarding ignition interlock devices -- ignition interlock device provider requirements.

61-8-442. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- ignition interlock device -- 24/7 sobriety and drug monitoring program -- forfeiture of vehicle.

61-8-460. Unlawful possession of open alcoholic beverage container in motor vehicle on highway.

61-8-461. Definitions.

61-8-465. Aggravated DUI.

61-8-714. Penalty for driving under influence of alcohol or drugs -- first through third offense.

61-8-722. Penalty for driving with excessive alcohol concentration or delta-9-tetrahydrocannabinol level -- first through third offense.

61-8-731. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- under influence of delta-9-tetrahydrocannabinol -- aggravated driving under the influence -- penalty for fourth or subsequent offense.

61-8-732. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- assessment, education, and treatment required.

61-8-733. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- ignition interlock device -- 24/7 sobriety and drug monitoring program -- forfeiture of vehicle.

61-8-734. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- conviction defined -- place of imprisonment -- home arrest -- exceptions -- deferral of sentence not allowed.

61-8-741. Suspension of imprisonment sentence for DUI court participation -- DUI court defined.

Section 44. Codification instruction. [Sections 1 through 17] are intended to be codified as an integral part of Title 61, chapter 8, and the provisions of Title 61, chapter 8, apply to [sections 1 through 17].

Section 46. Saving clause. [This act] does not affect rights and duties that matured, penalties that

were incurred, or proceedings that were begun before [the effective date of this act].

Section 45. Effective date. [This act] is effective January 1, 2022.

Section 46. Applicability. [This act] applies to DUI incidents taking place on or after [the effective date of this act].

- END -

I hereby certify that the within bill,

SB 365, originated in the Senate.

_____

Secretary of the Senate

_____

President of the Senate

Signed this _____day

of_____, 2021.

_____

Speaker of the House

Signed this _____day

of_____, 2021.

SENATE BILL NO. 365

INTRODUCED BY K. REGIER

AN ACT GENERALLY REVISING LAWS REGARDING DRIVING UNDER THE INFLUENCE; PROVIDING DEFINITIONS; PROVIDING FOR DRIVING UNDER THE INFLUENCE CRIMES, TREATMENT REQUIREMENTS, A SOBRIETY MONITORING PROGRAM, FORFEITURE PROVISIONS, IMPLIED CONSENT AND ADMINISTRATIVE LICENSE SUSPENSION, APPEAL PROCESS, CONDITIONS OF ADMISSIBILITY, A PROCESS FOR ADMINISTRATION OF TESTS, CONDITIONS FOR RECEIVING A PROBATIONARY DRIVER'S LICENSE, OPEN CONTAINER VIOLATIONS, AND REVOCATION AND SUSPENSION OF LICENSE PROCEDURES; PROVIDING RULEMAKING AUTHORITY; PROVIDING PENALTIES; AMENDING SECTIONS 23-2-535, 44-4-1205, 45-5-106, 45-5-205, 45-5-207, 45-5-628, 46-16-130, 46-18-201, 46-18-236, 50-46-320, 53-9-103, 61-1-101, 61-2-107, 61-2-302, 61-5-205, 61-5-208, 61-5-212, 61-5-218, 61-5-231, 61-5-405, 61-8-101, 61-8-102, 61-8-805, 61-8-807, 61-11-101, AND 67-1-211, MCA; REPEALING SECTIONS 61-8-401, 61-8-402, 61-8-403, 61-8-404, 61-8-405, 61-8-406, 61-8-407, 61-8-408, 61-8-409, 61-8-410, 61-8-411, 61-8-421, 61-8-422, 61-8-440, 61-8-441, 61-8-442, 61-8-460, 61-8-461, 61-8-465, 61-8-714, 61-8-722, 61-8-731, 61-8-732, 61-8-733, 61-8-734, AND 61-8-741, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

AN ACT GENERALLY REVISING LAWS REGARDING DRIVING UNDER THE INFLUENCE; PROVIDING DEFINITIONS; PROVIDING FOR DRIVING UNDER THE INFLUENCE CRIMES, TREATMENT REQUIREMENTS, A SOBRIETY MONITORING PROGRAM, FORFEITURE PROVISIONS, IMPLIED CONSENT AND ADMINISTRATIVE LICENSE SUSPENSION, APPEAL PROCESS, CONDITIONS OF ADMISSIBILITY, A PROCESS FOR ADMINISTRATION OF TESTS, CONDITIONS FOR RECEIVING A PROBATIONARY DRIVER'S LICENSE, OPEN CONTAINER VIOLATIONS, AND REVOCATION AND SUSPENSION OF LICENSE PROCEDURES; PROVIDING RULEMAKING AUTHORITY; PROVIDING PENALTIES; AMENDING SECTIONS 23-2-535, 44-4-1205, 45-5-106, 45-5-205, 45-5-207, 45-5-628, 46-16-130, 46-18-201, 46-18-236, 50-46-320, 53-9-103, 61-1-101, 61-2-107, 61-2-302, 61-5-205, 61-5-208, 61-5-212, 61-5-218, 61-5-231, 61-5-405, 61-8-101, 61-8-102, 61-8-805, 61-8-807, 61-11-101, AND 67-1-211, MCA; REPEALING SECTIONS 61-8-401, 61-8-402, 61-8-403, 61-8-404, 61-8-405, 61-8-406, 61-8-407, 61-8-408, 61-8-409, 61-8-410, 61-8-411, 61-8-421, 61-8-422, 61-8-440, 61-8-441, 61-8-442, 61-8-460, 61-8-461, 61-8-465, 61-8-714, 61-8-722, 61-8-731, 61-8-732, 61-8-733, 61-8-734, AND 61-8-741, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. As used in [sections 1 through 17], unless the context requires otherwise and unless a different meaning plainly is required, the following definitions apply:

(1) "Aggravated driving under the influence" means a person is in violation of [section 2(1)(a), (1)(b), (1)(c), or (1)(d)] and:

(a) the person's alcohol concentration, as shown by analysis of the person's blood, breath, or other bodily substance, is 0.16 or more;

(b) the person is under the order of a court or the department to equip any motor vehicle the person

operates with an approved ignition interlock device;

(c) the person's driver's license or privilege to drive is suspended, canceled, or revoked as a result of a prior violation of driving under the influence, including a violation of [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence, or a similar offense under previous laws of this state or the laws of another state; or

(d) the person refuses to give a breath sample as required in [section 8] and the person's driver's license or privilege to drive was suspended, canceled, or revoked under the provisions of an implied consent statute.

(2) "Alcoholic beverage" means a compound produced for human consumption as a drink that contains 0.5% or more of alcohol by volume.

(3) "Alcohol concentration" means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath, including as used in 16-6-305, 23-2-535, 45-5-207, 67-1-211, and this title.

(4) "Bus" means a motor vehicle with a manufacturer's rated seating capacity of 11 or more passengers, including the driver.

(5) "Camper" has the meaning provided in 61-1-101.

(6) "Commercial motor vehicle" has the meaning provided in 61-1-101.

(7) "Drug" means any substance that when taken into the human body can impair a person's ability to operate a vehicle safely. The term includes the meanings provided in 50-32-101(6), (7), and (14).

(8) "DUI court" means any court that has established a special docket for handling cases involving persons convicted under [section 3 or 4] and that implements a program of incentives and sanctions intended to assist a participant to complete treatment ordered pursuant to [section 5] and to end the participant's criminal behavior associated with the use of alcohol or drugs.

(9) "Highway" has the meaning provided in 61-1-101, including the shoulders of the highway.

(10) "Motor home" has the meaning provided in 61-1-101.

(11) "Motor vehicle" has the meaning provided in 61-1-101.

(12) "Open alcoholic beverage container" means a bottle, can, jar, or other receptacle that contains any amount of an alcoholic beverage and that is open or has a broken seal or the contents of which are partially removed.

(13) "Passenger area" means the area designed to seat the driver and passengers while a motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while the driver or a passenger is seated in the vehicle, including an unlocked glove compartment.

(14) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any combination of alcohol and drugs, a person's ability to safely operate a vehicle has been diminished.

(15) "Vehicle" has the meaning provided in 61-1-101, except that the term does not include a bicycle.

Section 2. Driving under influence. (1) A person commits the offense of driving under the influence if the person drives or is in actual physical control of:

(a) a vehicle or a commercial motor vehicle upon the ways of this state open to the public while under the influence of alcohol, any drug, or a combination of alcohol and any drug;

(b) a noncommercial vehicle upon the ways of this state open to the public while the person's alcohol concentration, as shown by analysis of the person's blood, breath, or other bodily substance, is 0.08 or more;

(c) a commercial motor vehicle within this state while the person's alcohol concentration, as shown by analysis of the person's blood, breath, or other bodily substance, is 0.04 or more;

(d) a noncommercial vehicle or commercial motor vehicle within this state while the person's delta-9-tetrahydrocannabinol level, excluding inactive metabolites, as shown by analysis of the person's blood or other bodily substance, is 5 ng/ml or more; or

(e) a vehicle within this state when the person is under 21 years of age at the time of the offense while the person's alcohol concentration, as shown by analysis of the person's blood, breath, or other bodily substance, is 0.02 or more.

(2) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the person at the time of a test, as shown by analysis of a sample of the person's blood, breath, or other bodily substance drawn or taken within a reasonable time after the alleged act, gives rise to the following inferences:

(a) if there was at that time an alcohol concentration of 0.04 or less, it may be inferred that the person was not under the influence of alcohol;

(b) if there was at that time an alcohol concentration in excess of 0.04 but less than 0.08, that fact may not give rise to any inference that the person was or was not under the influence of alcohol, but the fact may be considered with other competent evidence in determining the guilt or innocence of the person; and

(c) if there was at that time an alcohol concentration of 0.08 or more, it may be inferred that the person was under the influence of alcohol. The inference is rebuttable.

(3) The provisions of subsection (2) do not limit the introduction of any other competent evidence bearing on the issue of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and drugs.

(4) Each municipality in this state is given authority to enact this section, with the word "state" changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and the imposition of the fines and penalties provided in the ordinance.

(5) Absolute liability, as provided in 45-2-104, is imposed for a violation of this section.

(6) When the same acts may establish the commission of an offense under subsection (1), a person charged with the conduct may be prosecuted for a violation of another relevant subsection under subsection (1). However, the person may be convicted of only one offense under this section or of a similar offense under previous laws of this state.

Section 3. Penalty for driving under influence -- first through third offenses. (1) (a) Except as provided in subsection (1)(b) or (1)(c), a person convicted of a violation of [section 2(1)(a)] shall be punished as follows:

(i) for a first violation, by imprisonment for not less than 24 consecutive hours or more than 6 months and by a fine of not less than $600 or more than $1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 48 consecutive hours or more than 1 year and by a fine of not less than $1,200 or more than $2,000;

(ii) for a second violation, by imprisonment for not less than 7 days or more than 1 year and by a fine of not less than $1,200 or more than $2,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 14 days or more than 1 year and a fine of not less than $2,400 or more than $4,000; or

(iii) for a third violation, by imprisonment for not less than 30 days or more than 1 year and by a fine of not less than $2,500 or more than $5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 60 days or more than 1 year and by a fine of not less than $5,000 or more than $10,000.

(b) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in [section 4].

(c) If the person has a prior conviction or pending charge for a violation of driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], or a similar offense under previous laws of this state or the laws of another state that meets the definition of aggravated driving under the influence in [section 1], the person shall be punished as provided in subsection (4).

(d) The mandatory minimum imprisonment term may not be served under home arrest and may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the person's physical or mental well-being.

(e) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending the person's successful completion of a chemical dependency treatment program pursuant to [section 5]. During any suspended portion of sentence imposed by the court:

(i) the person is subject to all conditions of the suspended sentence imposed by the court, including mandatory participation in drug or DUI courts, if available;

(ii) the person is subject to all conditions of the 24/7 sobriety and drug monitoring program, if available and if imposed by the court; and

(iii) if the person violates any condition of the suspended sentence or any treatment requirement, the court may impose the remainder of any imprisonment term that was imposed and suspended.

(2) (a) Except as provided in subsection (2)(b) or (2)(c), a person convicted of a violation of [section 2(1)(b), (1)(c), or (1)(d)] shall be punished as follows:

(i) for a first violation, by imprisonment for not more than 6 months and by a fine of not less than $600 or more than $1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not more than 6 months and by a fine of not less than $1,200 or more than $2,000;

(ii) for a second violation, by imprisonment for not less than 5 days or more than 1 year and by a fine of not less than $1,200 or more than $2,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 10 days or more than 1 year and by a fine of not less than $2,400 or more than $4,000; or

(iii) for a third violation, by imprisonment for not less than 30 days or more than 1 year and by a fine of not less than $2,500 or more than $5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 60 days or more than 1 year and by a fine of not less than $5,000 or more than $10,000.

(b) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in [section 4].

(c) If the person has a prior conviction or pending charge for a violation of driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], or a similar offense under previous laws of this state or the laws of another state that meets the definition of aggravated driving under the influence in [section 1], the person shall be punished as provided in subsection (4).

(d) The mandatory minimum imprisonment term may not be served under home arrest and may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the person's physical or mental well-being.

(e) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending the person's successful completion of a chemical dependency treatment program pursuant to [section 5]. During any suspended portion of sentence imposed by the court:

(i) the person is subject to all conditions of the suspended sentence imposed by the court, including mandatory participation in drug or DUI courts, if available;

(ii) the person is subject to all conditions of the 24/7 sobriety and drug monitoring program, if available and if imposed by the court; and

(iii) if the person violates any condition of the suspended sentence or any treatment requirement, the court may impose the remainder of any imprisonment term that was imposed and suspended.

(3) (a) A person convicted of a violation of [section 2(1)(e)] shall be punished as follows:

(i) Upon a first conviction under this section, a person shall be punished by a fine of not less than

$100 or more than $500.

(ii) Upon a second conviction under this section, a person shall be punished by a fine of not less than $200 or more than $500 and, if the person is 18 years of age or older, by incarceration for not more than 10 days.

(iii) Upon a third or subsequent conviction under this section, a person shall be punished by a fine of not less than $300 or more than $500 and, if the person is 18 years of age or older, by incarceration for not less than 24 consecutive hours or more than 60 days.

(iv) In addition to the punishment provided in this section, regardless of disposition:

(A) the person shall comply with the chemical dependency education course and chemical dependency treatment provisions in [section 5] as ordered by the court; and

(B) the department shall suspend the person's driver's license for 90 days upon the first conviction, 6 months upon the second conviction, and 1 year upon the third or subsequent conviction. A restricted or probationary driver's license may not be issued during the suspension period until the person has paid a license reinstatement fee in accordance with 61-2-107 and, if the person was under the age of 18 at the time of the offense, has completed at least 30 days of the suspension period.

(b) A conviction under this section may not be counted as a prior offense or conviction under [sections 3, 4, and 7].

(4) (a) A person convicted of a violation under [section 2] charged as aggravated driving under the influence, as defined in [section 1], shall be punished as follows:

(i) for a first violation, by imprisonment for not less than 2 days or more than 1 year and by a fine of $1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 4 consecutive days or more than 1 year and by a fine of $2,000;

(ii) for a second violation, by imprisonment for not less than 15 days or more than 1 year and by a fine of $2,500, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 45 days or more than 1 year and by a fine of $5,000; or

(iii) for a third violation, by imprisonment for not less than 40 consecutive days or more than 1 year and

by a fine of $5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 90 consecutive days or more than 1 year and by a fine of $10,000.

(b) The mandatory minimum imprisonment term may not be served under home arrest and may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the person's physical or mental well-being.

(c) The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending the person's successful completion of a chemical dependency treatment program pursuant to [section 5]. During any suspended portion of sentence imposed by the court:

(i) the person is subject to all conditions of the suspended sentence imposed by the court, including mandatory participation in drug or DUI courts, if available;

(ii) the person is subject to all conditions of the 24/7 sobriety and drug monitoring program, if available and if imposed by the court; and

(iii) if the person violates any condition of the suspended sentence or any treatment requirement, the court may impose the remainder of any imprisonment term that was imposed and suspended.

(d) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in [section 4].

(5) In addition to the punishment provided in this section, regardless of disposition, the person shall comply with the chemical dependency education course and chemical dependency treatment provisions in [section 5] as ordered by the court.

(6) A person punished pursuant to this section is subject to mandatory revocation or suspension of the person's driver's license as provided in chapter 5.

Section 4. Penalty for driving under influence -- fourth and subsequent offenses. (1) (a) A person convicted of a violation of driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, who has also been convicted under either 45-5-106 or any combination of three or more convictions under 45-5-104, 45-5-205, 45-5-628(1)(e), driving under

the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, and the offense under 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, any drug, or any combination of alcohol and any drug, as provided in [section 2(1)(a)], is guilty of a felony and shall be punished by:

(i) being sentenced to the department of corrections for a term of not less than 13 months or more than 2 years for placement in either an appropriate correctional facility or a program, followed by a consecutive term of 5 years to the Montana state prison or the Montana women's prison, all of which must be suspended, and a fine of not less than $5,000 or more than $10,000; or

(ii) being sentenced to a term of up to 5 years in an appropriate treatment court program, with required completion, and a fine of not less than $5,000 or more than $10,000. If sentenced under this alternative, the person may be entitled to a suspended sentence but is not eligible for a deferred imposition of sentence.

(b) Regarding the sentence provided for in subsection (1)(a)(i):

(i) the imposition or execution of the sentence may not be deferred or suspended, and the person is not eligible for parole;

(ii) the program in subsection (1)(a)(i) may be a residential alcohol treatment program approved by the department of corrections;

(iii) following initial placement of a defendant in a residential alcohol treatment program facility, the department of corrections may, at its discretion, place the offender in another facility or program;

(iv) the court shall order that if the person successfully completes a residential alcohol treatment program approved by the department of corrections, the remainder of the 13-month to 2-year term must be served on probation with the conditions that:

(A) the person abide by the standard conditions of probation promulgated by the department of corrections;

(B) a person who is financially able to pay the costs of imprisonment, probation, and alcohol treatment under this section does so;

(C) the person may not frequent an establishment where alcoholic beverages are served;

(D) the person may not consume alcoholic beverages;

(E) the person may not operate a motor vehicle unless authorized by the person's probation officer;

(F) the person enter in and remain in an aftercare treatment program for the entirety of the probationary period;

(G) the person submit to random or routine drug and alcohol testing; and

(H) if the person is permitted to operate a motor vehicle, the vehicle be equipped with an ignition interlock system; and

(v) the sentencing judge may impose on the defendant any other reasonable restrictions or conditions during the period of probation. Reasonable restrictions or conditions may include but are not limited to:

(A) payment of a fine as provided in 46-18-231;

(B) payment of costs as provided in 46-18-232 and 46-18-233;

(C) payment of costs of assigned counsel as provided in 46-8-113;

(D) community service;

(E) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of society; or

(F) any combination of the restrictions or conditions listed in subsections (1)(b)(v)(A) through (1)(b)(v)(E).

(2) A person convicted of a violation of driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, who was previously placed in a residential alcohol treatment program under subsection (1)(a)(i), whether or not the person successfully completed the program, and who has also been convicted under either 45-5-106 or any combination of four or more prior convictions under 45-5-104, 45-5-205, 45-5-628(1)(e), driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, and the offense under 45-5-104 occurred while the person was operating a vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided in [section 2(1)(a)], shall be punished by being sentenced to the department of corrections for a term of not less than 13 months or more

than 5 years or being fined an amount of not less than $5,000 or more than $10,000, or both.

(3) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-1014, and 46-23-1031 apply to a person sentenced under this section.

(4) A person punished pursuant to this section is subject to mandatory revocation or suspension of the person's driver's license as provided in chapter 5.

Section 5. Driving under influence -- assessment, education, and treatment required. (1) In addition to the punishments provided in [sections 3 and 4], regardless of disposition, a defendant convicted of a violation of driving under the influence, including [section 2], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state shall complete a chemical dependency assessment and:

(a) for a first conviction, except as provided in subsection (8)(b), a chemical dependency education course; and

(b) for a second or subsequent conviction for a violation of driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, except a fourth or subsequent conviction for which the defendant completes a residential alcohol treatment program under [section 4(1)(a)(i)], or as required by subsection (8) of this section, chemical dependency treatment.

(2) The sentencing judge may, in the judge's discretion, require the defendant to complete the chemical dependency assessment prior to sentencing the defendant. If the assessment is not ordered or completed before sentencing, the judge shall order the chemical dependency assessment as part of the sentence.

(3) The chemical dependency assessment and the chemical dependency education course must be completed at a treatment program approved by the department of public health and human services and must be conducted by a licensed addiction counselor. Approved programs must be evidence-based programs. The defendant may attend a treatment program of the defendant's choice as long as the treatment services are provided by a licensed addiction counselor. The defendant shall pay the cost of the assessment, the education course, and chemical dependency treatment and may use health insurance to cover the costs when possible.

(4) The assessment must describe the defendant's level of addiction, if any, and contain a recommendation as to education, treatment, or both. The assessment must conform to quality standards required by the department of public health and human services. A defendant who disagrees with the initial assessment may, at the defendant's cost, obtain a second assessment provided by a licensed addiction counselor or a program approved by the department of public health and human services.

(5) The treatment provided to the defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug problem, or both, as determined by a licensed addiction counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services. The rules must include evidence-based treatment programs or courses approved by the department that are likely to reduce recidivism. Upon determination, the court shall order the defendant's appropriate level of treatment. If more than one counselor makes a determination as provided in this subsection, the court shall order an appropriate level of treatment based on the determination of one of the counselors.

(6) Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a chemical dependency education course or treatment program. If the defendant fails to attend the course or treatment program, the counselor shall notify the court of the failure.

(7) A court or counselor may not require attendance at a self-help program other than at an open meeting, as that term is defined by the self-help program. A defendant may voluntarily participate in self-help programs.

(8) (a) Chemical dependency treatment must be ordered for a first-time or second-time offender convicted of a violation of driving under the influence, including [section 2], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, upon a finding of moderate or severe alcohol or drug use disorder made by a licensed addiction counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services.

(b) If treatment is ordered under subsection (8)(a) for a first-time offender, the offender may not also be required to attend a chemical dependency education course.

(9) (a) On a second or subsequent conviction, the treatment program provided for in subsection (5)

must be followed by monthly monitoring for a period of at least 1 year from the date of admission to the program.

(b) If a defendant fails to comply with the monitoring program imposed under subsection (9)(a), the court shall revoke the suspended sentence, if any, impose any remaining portion of the suspended sentence, and may include additional monthly monitoring for up to an additional 1 year.

(10) Notwithstanding 46-18-201(2), whenever a judge suspends a sentence imposed under [section 3] and orders the person to complete chemical dependency treatment under this section, the judge retains jurisdiction to impose any suspended sentence for up to 1 year.

Section 6. Driving under influence -- ignition interlock device -- 24/7 sobriety and drug monitoring program. (1) For a person convicted of a first offense of driving under the influence, including [section 2], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under the laws of another state, in addition to the punishments listed in [section 3], the court may, regardless of disposition and if a probationary license is recommended by the court, require the person to comply with the conditions listed in subsection (2)(a) or (2)(b).

(2) On a second or subsequent conviction for a violation of driving under the influence, including [section 2], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under the laws of another state, or a second or subsequent conviction under 61-5-212 when the reason for the suspension or revocation was that the person was convicted of a violation of driving under the influence, including [section 2], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, or the suspension was under [section 8] or a similar law of another state for refusal to take a test for alcohol or drugs requested by a peace officer who believed that the person might be driving under the influence, in addition to the punishments listed in [section 2] and [section 3], the court shall require the person:

(a) to participate in the 24/7 sobriety and drug monitoring program provided for in 44-4-1203 or require the person to participate in a court-approved alcohol or drug detection testing program and to pay the fees associated with the program;

(b) if recommending that a probationary license be issued to the person, restrict the person to driving

only a motor vehicle equipped with a functioning ignition interlock device during the probationary period and require the person to pay the reasonable cost of leasing, installing, and maintaining the device; or

(c) order that each motor vehicle owned by the person at the time of the offense be seized and subjected to the forfeiture procedure provided under [section 17].

(i) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(ii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

Section 7. Driving under influence -- conviction defined -- place of imprisonment -- home arrest -- exceptions -- deferral of sentence not allowed. (1) (a) For the purpose of determining the number of convictions for prior offenses referred to in [sections 1 through 4], "conviction" means:

(i) a final conviction, as defined in 45-2-101, in this state, in another state, or on a federally recognized Indian reservation;

(ii) a forfeiture, which has not been vacated, of bail or collateral deposited to secure the defendant's appearance in court in this state, in another state, or on a federally recognized Indian reservation; or

(iii) a conviction for a violation of driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, or a violation of a similar statute or regulation in another state or on a federally recognized Indian reservation.

(b) An offender is considered to have been previously convicted for the purposes of sentencing if less than 10 years have elapsed between the commission of the present offense and a previous conviction unless the offense is the offender's third or subsequent offense, in which case all previous convictions must be used

for sentencing purposes.

(c) A previous conviction for a violation of driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, or a violation of a similar statute or regulation in another state or on a federally recognized Indian reservation, and as otherwise defined in subsection (1)(a) may be counted for the purposes of determining the number of a subsequent conviction for a violation of driving under the influence under [section 2].

(d) A previous conviction for a violation of 45-5-104 for which the offense under 45-5-104 occurred while the person was operating a vehicle in violation of driving under the influence, including [section 2(1)(a), (1)(b), (1)(c), or (1)(d)], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or the laws of another state, and a previous conviction for a violation of 45-5-205 or 45-5-628(1)(e) may also be counted for the purposes of determining the number of a subsequent conviction for a violation of driving under the influence under [section 2].

(2) Except as provided in [section 4], the court may order that a term of imprisonment imposed under [section 3 or 4] be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and may require that the defendant follow the rules of the facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

(3) Subject to the limitations set forth in [section 3] concerning minimum periods of imprisonment, the court may order that a term of imprisonment imposed under [section 3] be served by imprisonment under home arrest, as provided in Title 46, chapter 18, part 10.

(4) A court may not defer imposition of sentence under [section 3 or 4].

(5) The provisions of 61-2-107, 61-5-205(2), and 61-5-208(2), relating to suspension of driver's licenses and later reinstatement of driving privileges, apply to any conviction under [section 3] for a violation of [section 2].

Section 8. Implied consent -- blood or breath tests for alcohol, drugs, or both -- refusal to submit to test -- administrative license suspension. (1) (a) A person who operates or is in actual physical control of a vehicle or commercial motor vehicle upon the ways of this state open to the public is considered to have given consent to a test or tests of the person's blood or breath for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body.

(b) The tests in subsection (1)(a) include but are not limited to a preliminary alcohol screening test of the person's breath for the purpose of estimating the person's alcohol concentration.

(c) A preliminary alcohol screening test may not be conducted or requested under this section unless both the peace officer and the instrument used to conduct the test have been certified by the department pursuant to rules adopted under the authority of [section 11(5)].

(d) The person's obligation to submit to a test in subsection (1)(a) is not satisfied by the person submitting to a preliminary alcohol screening test pursuant to this section.

(2) (a) The test or tests must be administered at the direction of a peace officer when:

(i) the peace officer has particularized suspicion to believe that the person has been driving or has been in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and the person has been detained for a violation of driving under the influence as provided in [section 2] or an offense that meets the definition of aggravated driving under the influence in [section 1];

(ii) the person is under the age of 21 and the peace officer has particularized suspicion to believe that the person has been driving or in actual physical control of a vehicle in violation of [section 2(1)(e)]; or

(iii) the peace officer has probable cause to believe that the person was driving or in actual physical control of a vehicle or commercial motor vehicle:

(A) in violation of driving under the influence, as provided in [section 2], and the person has been placed under arrest;

(B) in violation of driving under the influence as provided in [section 2], and the person has been involved in a motor vehicle crash or collision resulting in property damage;

(C) and the person has been involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in 45-2-101, or death; or

(D) in violation of driving under the influence as provided in [section 2] and meets the definition of aggravated driving under the influence in [section 1].

(b) A peace officer may designate which test or tests are administered.

(c) The peace officer shall inform the person of the right to refuse the test and that the refusal to submit to the test will result in the suspension for up to 1 year of that person's driver's license.

(d) A hearing as provided for in [section 9] must be available. The issues in the hearing must be limited to determining whether a peace officer had a particularized suspicion that the person was in violation of [section 2] or an offense meeting the definition of aggravated driving under the influence in [section 1], and whether the person refused to submit to the test.

(e) If a person refuses a preliminary alcohol screening test and another test during the same incident, the department may not consider each a separate refusal for purposes of suspension of the person's driver's license.

(3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent requested in subsection (1).

(4) (a) If an arrested person refuses to submit to one or more tests requested and designated by the peace officer, the refused test or tests may not be given unless the person has refused to provide a breath, blood, urine, or other bodily substance in a prior investigation in this state or under a substantially similar statute in another jurisdiction or the arrested person has a prior conviction or pending offense for a violation of 45-5-104, 45-5-106, 45-5-205, or driving under the influence, including [section 2], an offense that meets the definition of aggravated driving under the influence in [section 1], or a similar offense under previous laws of this state or a similar statute in another jurisdiction.

(b) Upon the person's refusal to provide the breath, blood, urine, or other bodily substance requested by the peace officer pursuant to subsection (1) and this subsection (4) may apply for a search warrant to be issued pursuant to 46-5-224 to collect a sample of the person's blood for testing.

(c) (i) Upon the person's refusal to provide a breath, blood, urine, or other bodily substance, the peace officer shall, on behalf of the department, immediately seize the person's driver's license. The peace officer shall immediately forward the license to the department, along with a report certified under penalty of law stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing request and

confirming that the person refused to submit to one or more tests requested and designated by the peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in [section 16].

(ii) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of issuance, and shall provide the driver with written notice of the license suspension and the right to a hearing as provided in [section 9].

(iii) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or more tests.

(5) This section does not apply to tests, samples, and analyses of blood or breath used for purposes of medical treatment or care of an injured motorist, related to a lawful seizure for a suspected violation of an offense not in this part, or performed pursuant to a search warrant.

(6) This section does not prohibit the release of information obtained from tests, samples, and analyses of blood or breath for law enforcement purposes as provided in 46-4-301 and [section 11(6)].

Section 9. Right of appeal to court. (1) Within 30 days after notice of the right to a hearing has been given by a peace officer, a person may file a petition to challenge the license suspension or revocation in the district court in the county where the arrest was made.

(2) The court has jurisdiction and shall set the matter for hearing. The court shall give at least 10 days' written notice of the hearing to the county attorney of the county where the arrest was made and to the city attorney if the incident leading to the suspension or revocation resulted in a charge filed in a city or municipal court. The county attorney or city attorney may represent the state. If the county attorney and the city attorney cannot agree on who will represent the state, the county attorney shall represent the state.

(3) Upon request of the petitioner, the court may order the department to return the seized license or issue a stay of the suspension or revocation action pending the hearing.

(4) The court shall take testimony, examine the facts of the case, and determine whether the petitioner is entitled to a license or whether the petitioner's license is subject to suspension or revocation based

on no other issues than:

(a) whether a peace officer had a basis for requesting a test or tests as set forth in [section 8], and

(b) whether the person refused to submit to one or more tests designated by the peace officer.

(5) This section does not grant a right of appeal to a state court if a driver's license is initially seized, suspended, or revoked pursuant to a tribal law or regulation that requires alcohol or drug testing of motor vehicle operators.

Section 10. Evidence admissible -- conditions of admissibility. (1) Upon the trial of a criminal action or other proceeding arising out of acts alleged to have been committed by a person in violation of driving under the influence, including [section 2], an offense that meets the definition of aggravated driving under the influence in [section 1], a similar offense under previous laws of this state or the laws of another state, or 61-8-805:

(a) evidence of any measured amount or detected presence of alcohol, drugs, or a combination of alcohol and drugs in the person at the time of a test, as shown by an analysis of the person's blood or breath, is admissible. A positive test result does not, in itself, prove that the person was under the influence of a drug or drugs at the time the person was in control of a vehicle. A person may not be convicted of a violation of [section 2(1)(a)] based on the presence of a drug or drugs in the person unless some other competent evidence exists that tends to establish that the person was under the influence of a drug or drugs while driving or in actual physical control of a motor vehicle within this state.

(b) a report of the facts and results of one or more tests of a person's blood or breath is admissible in evidence if:

(i) a breath test or preliminary alcohol screening test was performed by a person certified by the forensic sciences division of the department to administer the test; or

(ii) a blood sample was analyzed in a laboratory operated or certified by the department or in a laboratory exempt from certification under the rules of the department and the blood was withdrawn from the person by a person competent to do so under [section 11(1)]; and

(c) a report of the facts and results of a physical, psychomotor, or physiological assessment of a person is admissible in evidence if it was made by a person trained by the department or by a person who has

received training recognized by the department.

(2) If the person under arrest refused to submit to one or more tests under [section 8], whether or not a sample was subsequently collected for any purpose, proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a vehicle upon the ways of this state open to the public while under the influence of alcohol, drugs, or a combination of alcohol and drugs. The trier of fact may infer from the refusal that the person was under the influence. The inference is rebuttable.

(3) The provisions of this part do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and drugs.

Section 11. Administration of tests. (1) Only a licensed physician, registered nurse, or other qualified person acting under the supervision and direction of a physician or registered nurse may, at the request of a peace officer, withdraw blood for the purpose of determining any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person. This limitation does not apply to the sampling of breath.

(2) In addition to any test administered at the direction of a peace officer, a person may request that an independent blood sample be drawn by a physician or registered nurse for the purpose of determining any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person. The peace officer may not unreasonably impede the person's right to obtain an independent blood test. The peace officer may but has no duty to transport the person to a medical facility or otherwise assist the person in obtaining the test. The cost of an independent blood test is the sole responsibility of the person requesting the test. The failure or inability to obtain an independent test by a person does not preclude the admissibility in evidence of any test given at the direction of a peace officer.

(3) Upon the request of the person tested, full information concerning any test given at the direction of the peace officer must be made available to the person or the person's attorney.

(4) A physician, registered nurse, or other qualified person acting under the supervision and direction of a physician or registered nurse does not incur any civil or criminal liability as a result of the proper

administering of a blood test when requested in writing by a peace officer to administer a test.

(5) The department in cooperation with any appropriate agency shall adopt uniform rules for the giving of tests and may require certification of training to administer the tests as considered necessary.

(6) If a peace officer has probable cause to believe that a person has violated [section 2], meets the definition of aggravated driving under the influence as defined in [section 1], or has violated 61-8-805 and a sample of blood, breath, urine, or other bodily substance is taken from that person for any reason, a portion of that sample sufficient for analysis must be provided to a peace officer if requested for law enforcement purposes and upon issuance of a subpoena as provided in 46-4-301.

Section 12. Ignition interlock device -- assisting in starting and operating -- circumventing -- penalty. (1) It is unlawful for a person who is subject to a restriction under [section 6] to operate a vehicle that is not equipped with an ignition interlock device.

(2) A person may not knowingly assist a person who is restricted to the use of an ignition interlock device to start and operate the restricted person's vehicle.

(3) A person may not knowingly circumvent the operation of an ignition interlock device.

(4) A person convicted of a violation of this section shall be punished by a fine of not more than $500 or by imprisonment for not more than 6 months or both.

(5) This section does not apply if:

(a) the starting of a motor vehicle or the request to start a motor vehicle equipped with an ignition interlock device is done for the purpose of safety or mechanical repair of the device or the vehicle; and

(b) the person subject to the restriction does not operate the vehicle.

Section 13. Department rules regarding ignition interlock devices -- ignition interlock device provider requirements. (1) The department shall adopt rules providing for the approval of ignition interlock devices and the installation, calibration, repair, and removal of approved devices.

(2) The department's rules must be based on federal standards issued for similar devices.

(3) An ignition interlock device that is approved by the department must also:

(a) be designed so it does not impede safe operation of the vehicle;

(b) correlate well with the level established for alcohol impairment;

(c) work accurately and reliably in an unsupervised environment and under extreme weather conditions;

(d) require a deep lung breath sample or use an equally accurate measure of blood alcohol concentration equivalence;

(e) resist tampering and show evidence of tampering if it is attempted;

(f) be difficult to circumvent;

(g) minimize inconvenience of a sober user;

(h) operate reliably over the range of automobile environments and in connection with various manufacturing standards; and

(i) be manufactured by a person who is adequately insured for product liability.

(4) An ignition interlock device provider shall include in any lease agreement for an ignition interlock device a warning that a person who knowingly tampers with, circumvents, or otherwise misuses the device is subject to criminal prosecution.

Section 14. Unlawful possession of open alcoholic beverage container in motor vehicle on highway. (1) Except as provided in subsection (2), a person commits the offense of unlawful possession of an open alcoholic beverage container in or on a motor vehicle if the person knowingly possesses an open alcoholic beverage container within the passenger area of a motor vehicle on a highway.

(2) This section does not apply to an open alcoholic beverage container:

(a) in a locked glove compartment or storage compartment;

(b) in a motor vehicle trunk or luggage compartment or rack, or in a truck bed or cargo compartment;

(c) behind the last upright seat of a motor vehicle that is not equipped with a trunk;

(d) in a closed container in the area of a motor vehicle that is not equipped with a trunk and that is not normally occupied by the driver or a passenger; or

(e) in the immediate possession of a passenger:

(i) of a bus, taxi, or limousine that is used for the transportation of persons for compensation and that includes the provision of a hired driver; or

(ii) in the living quarters of a camper, travel trailer, or motor home.

(3) (a) A person convicted of the offense of unlawful possession of an open alcoholic beverage container in a motor vehicle shall be fined an amount not to exceed $100.

(b) A violation of this section is not a criminal offense within the meaning of 3-1-317, 3-1-318, 45-2-101, 46-18-236, 61-8-104, and 61-8-711 and may not be recorded or charged against a driver's record, and an insurance company may not hold a violation of this section against the insured or increase premiums because of the violation. The surcharges provided for in 3-1-317, 3-1-318, and 46-18-236 may not be imposed for a violation of this section.

Section 15. Suspension of imprisonment sentence for DUI court participation. (1) If a person participates in a DUI court, the court may, at the court's discretion, suspend all or a portion of an imprisonment sentence under [section 3], except for the mandatory minimum imprisonment term.

(2) If a person participating in a DUI court fails to comply with the conditions imposed by the DUI court, the court shall revoke the suspended imprisonment sentence and any sentence subsequently imposed must commence from the effective date of the revocation.

Section 16. Mandatory suspension of license following certain implied consent action. (1) The department shall suspend an individual's driver license if the department receives a report for an implied consent violation from law enforcement or another reporting jurisdiction that, pursuant to [section 8], an individual has refused a test or tests of the person's blood, breath, urine, or other bodily substance for determining any measured amount or detected presence of alcohol or drugs in the person's body.

(2) (a) Except as permitted by law, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended may not have the license or privilege renewed or restored until the revocation or suspension duration has been completed.

(b) The department shall apply the appropriate sanction to the driver based on the reported conviction and prior offenses.

(c) The driver shall pay all reinstatement and administrative fees owed to the department before a driver's license or privilege to drive is restored.

(d) The duration of the suspension commences from the date of violation.

(e) If a person refuses tests for the same incident, the department may not consider each a separate refusal for purposes of suspension.

(f) The department may not issue a probationary license during the suspension issued under this part.

(3) (a) A person who has an implied consent violation shall pay the department an administrative fee of $300, which must be deposited in the state special revenue account established pursuant to subsection (3)(b).

(b) There is a blood-draw search warrant processing account in the state special revenue fund established pursuant to 17-2-102(1)(b). Money provided to the department of justice pursuant to this subsection (3) must be deposited in the account and may be used only for providing forensic analysis of a driver's blood to determine the presence of alcohol or drugs.

(4) (a) Upon receiving a report of an implied consent violation, the department shall:

(i) for a first violation, suspend the driver's license or driving privilege for 6 months with no provision for a restricted probationary license; or

(ii) for a second or subsequent violation within 5 years of a previous refusal, as determined from the records of the department, suspend the driver's license or driving privilege for 1 year with no provision for a restricted probationary license.

(b) If a person who refuses to submit to one or more tests under this section is the holder of a commercial driver's license, in addition to any action taken against the driver's noncommercial driving privileges, the department shall:

(i) upon a first refusal, suspend the person's commercial driver's license for 1 year; and

(ii) upon a second or subsequent refusal, suspend the person's commercial driver's license for life, subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person is otherwise eligible, upon completion of a minimum suspension period of 10 years. If the person has a prior conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the conviction has the same effect as a previous testing refusal.

(5) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or

more tests.

(6) The department may recognize the seizure of a license of a tribal member by a peace officer acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department under this subsection is not reviewable under [section 9].

Section 17. Forfeiture procedure. (1) A motor vehicle forfeited under [section 6] must be seized by the arresting agency within 10 days after the conviction and disposed of as provided in Title 44, chapter 12, part 2. Except as provided in this section, the provisions of Title 44, chapter 12, part 2, apply to the extent applicable.

(2) Forfeiture proceedings under 44-12-207 through 44-12-211 must be instituted by the arresting agency within 20 days after the seizure of the motor vehicle.

(3) (a) For purposes of 44-12-213, the proceeds of the sale of the motor vehicle must be distributed first to the holders of security interests who have presented proper proof of their claims, up to the amount of the interests or the amount received from the sale, whichever is less, and the remainder to the general fund of the arresting agency.

(b) A holder of a security interest may petition the sentencing court for transfer of title to the motor vehicle to the holder of the security interest if the secured interest is equal to or greater than the estimated value of the motor vehicle.

(4) Actions the court may take under 44-12-212(3) to protect the rights of innocent persons include return of the motor vehicle without a sale to an owner who is unable to present an adequate defense under this section but is found by the court to be without fault.

Section 18. Section 23-2-535, MCA, is amended to read:

"**23-2-535. Alcohol concentration standards -- evidence admissible -- administration of tests.** (1) The inferences contained in ~~61-8-401(4)~~ [section 2] apply to any criminal action or proceeding arising out of

acts alleged to have been committed in violation of 23-2-523(2).

(2) Evidence of any measured amount or detected presence of alcohol in a person at the time of the act alleged, as shown by analysis of the person's blood, breath, or urine, and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(3) If a person charged with violation of 23-2-523(2) refuses to submit to a test of the person's blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol, none will be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(4) The provisions relating to administration of tests provided in ~~61-8-405~~ [section 11] and the definition of alcohol concentration provided in ~~61-8-407~~ [section 1] apply to any testing done to a person charged with violation of 23-2-523(2).

(5) As used in 23-2-523(2), the term "under the influence" has the meaning provided in ~~61-8-401(3)~~ [section 1]."

Section 19. Section 44-4-1205, MCA, is amended to read:

"**44-4-1205. Authority of court to order participation in sobriety and drug monitoring program -- probationary license -- imposition of conditions.** (1) (a) Any court or agency utilizing the sobriety program may stay any sanctions that it imposed against an offender while the offender is in compliance with the sobriety program.

(b) If an individual convicted of the offense of aggravated driving under the influence ~~in violation of 61-8-465~~ as defined in [section 1], a second or subsequent offense of driving under the influence in violation of ~~61-8-401~~ [section 2], or a second or subsequent offense of driving with excessive alcohol concentration in violation of ~~61-8-406~~ [section 2(1)(b), (1)(c), or (1)(d)] has been required to participate in the sobriety program, the court may, upon the individual's obtaining proof of insurance pursuant to 61-6-301, notify the department that as a participant in the sobriety program, the individual is eligible for a restricted probationary driver's license pursuant to 61-2-302, notwithstanding the requirements of 61-5-208 that an individual is required to complete a

certain portion of a suspension period before a probationary license may be issued.

(c) If the individual fails to comply with the requirements of the sobriety program, the court may notify the department of the individual's noncompliance and direct the department to withdraw the individual's probationary driver's license and reinstate the remainder of the suspension period provided in 61-5-208.

(2) Upon an offender's participation in the sobriety program and payment of the fees required by 44-4-1204:

(a) the court may condition any bond or pretrial release for an individual charged with ~~a violation of 61-8-465~~ aggravated driving under the influence as defined in [section 1], a second or subsequent violation of ~~61-8-401 or 61-8-406~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] or aggravated driving under the influence as defined in [section 1], or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime;

(b) the court may condition the granting of a suspended execution of sentence or probation for an individual convicted of ~~a violation of 61-8-465~~ aggravated driving under the influence as defined in [section 1], a second or subsequent violation of ~~61-8-401 or 61-8-406~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] or aggravated driving under the influence as defined in [section 1], or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime;

(c) the board of pardons and parole may condition parole for ~~a violation of 61-8-465~~ aggravated driving under the influence as defined in [section 1], a second or subsequent violation of ~~61-8-401 or 61-8-406~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] or aggravated driving under the influence as defined in [section 1], or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime; or

(d) the department of corrections may establish conditions for conditional release for a violation of ~~61-8-465~~ aggravated driving under the influence as defined in [section 1], a second or subsequent violation of ~~61-8-401 or 61-8-406~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] or aggravated driving under the influence as defined in [section 1], or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the

crime.

(3) An entity referred to in subsections (2)(a) through (2)(d) may condition any bond or pretrial release, suspended execution of sentence, probation, parole, or conditional release as provided in those subsections for an individual charged with or convicted of a violation of any statute involving domestic abuse or the abuse or neglect of a minor if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime regardless of whether the charge or conviction was for a first, second, or subsequent violation of the statute.

(4) A person is eligible to participate in and a court may compel a person to participate in a sobriety program if the person:

(a) is charged with ~~violating 61-8-465~~ aggravated driving under the influence as defined in [section 1]; or

(b) (i) is charged with or has been convicted of violating ~~61-8-401 or 61-8-406~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] or aggravated driving under the influence as defined in [section 1]; and

(ii) at any time in the 10 years preceding the date of the current charge or conviction:

(A) has been convicted in this state of a violation of ~~61-8-401, 61-8-406, or 61-8-465~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] or aggravated driving under the influence as defined in [section 1];

(B) has been convicted of a violation of a statute or regulation in another state or on a federally recognized Indian reservation that is similar to ~~61-8-401, 61-8-406, or 61-8-465~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] or aggravated driving under the influence as defined in [section 1]; or

(C) has forfeited bail or collateral deposited to secure the defendant's appearance in court in this state, in another state, or on a federally recognized Indian reservation for a charge of violating ~~61-8-401, 61-8-406, 61-8-465~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] or aggravated driving under the influence as defined in [section 1], or a similar statute or regulation and the forfeiture has not been vacated.

(5) As used in this section, "conviction" has the meaning provided in 45-2-101."

Section 20. Section 45-5-106, MCA, is amended to read:

"**45-5-106. Vehicular homicide while under influence.** (1) A person commits the offense of vehicular homicide while under the influence if the person negligently causes the death of another human being

while the person is operating a vehicle in violation of ~~61-8-401, 61-8-406, or 61-8-411~~ [section 2].

(2) Vehicular homicide while under the influence is not an included offense of deliberate homicide as described in 45-5-102(1)(b).

(3) A person convicted of vehicular homicide while under the influence shall be imprisoned in a state prison for a term not to exceed 30 years or be fined an amount not to exceed $50,000, or both. Imposition of a sentence may not be deferred."

Section 21. Section 45-5-205, MCA, is amended to read:

"**45-5-205. Negligent vehicular assault -- penalty.** (1) A person who negligently operates a vehicle, other than a bicycle as defined in 61-8-102, while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided for in ~~61-8-401(1)~~ [section 2], and who causes bodily injury to another commits the offense of negligent vehicular assault.

(2) Subject to subsection (3), a person convicted of the offense of negligent vehicular assault shall be fined an amount not to exceed $1,000 or incarcerated in a county jail for a term not to exceed 1 year, or both, and shall be ordered to pay restitution as provided in 46-18-241.

(3) A person convicted of the offense of negligent vehicular assault who caused serious bodily injury to another shall be fined an amount not to exceed $10,000 or incarcerated for a term not to exceed 10 years, or both, and shall be ordered to pay restitution as provided in 46-18-241.

(4) If a term of incarceration is imposed under subsection (2) or (3), the judge may suspend the term of incarceration upon the condition of payment of any fine imposed and of restitution. If the person does not pay the fine or restitution, the term of incarceration may be imposed."

Section 22. Section 45-5-207, MCA, is amended to read:

"**45-5-207. Criminal endangerment -- penalty.** (1) A person who knowingly engages in conduct that creates a substantial risk of death or serious bodily injury to another commits the offense of criminal endangerment. This conduct includes but is not limited to knowingly placing in a tree, log, or any other wood any steel, iron, ceramic, or other substance for the purpose of damaging a saw or other wood harvesting, processing, or manufacturing equipment.

(2) A high blood alcohol concentration, ~~as provided in 61-8-407,~~ alone is not sufficient to support a criminal endangerment charge.

(3) A person convicted of the offense of criminal endangerment shall be fined an amount not to exceed $50,000 or imprisoned in the state prison for a term not to exceed 10 years, or both.

(4) As used in this section, "alcohol concentration" has the meaning provided in [section 1]."

Section 23. Section 45-5-628, MCA, is amended to read:

"**45-5-628. Criminal child endangerment**. (1) A person commits the offense of criminal child endangerment if the person purposely, knowingly, or negligently causes substantial risk of death or serious bodily injury to a child under 14 years of age by:

(a) failing to seek reasonable medical care for a child suffering from an apparent acute life-threatening condition;

(b) placing a child in the physical custody of another who the person knows has previously purposely or knowingly caused bodily injury to a child;

(c) placing a child in the physical custody of another who the person knows has previously committed an offense against the child under 45-5-502 or 45-5-503;

(d) manufacturing or distributing dangerous drugs in a place where a child is present;

(e) operating a motor vehicle under the influence of alcohol or dangerous drugs in violation of ~~61-8-401, 61-8-406, 61-8-410, or 61-8-465~~ [section 2] or committing aggravated driving under the influence as defined in [section 1] with a child in the vehicle; or

(f) failing to attempt to provide proper nutrition for a child, resulting in a medical diagnosis of nonorganic failure to thrive.

(2) A person may not be charged under subsection (1)(b) or (1)(c) if the person placed the child in the other person's custody pursuant to a court order.

(3) A person convicted of the offense of criminal child endangerment shall be fined an amount not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(4) For purposes of this section, "nonorganic failure to thrive" means inadequate physical growth that is a result of insufficient nutrition and is not secondary to a diagnosed medical condition."

Section 24. Section 46-16-130, MCA, is amended to read:

"**46-16-130. Pretrial diversion.** (1) (a) Prior to the filing of a charge, the prosecutor and a defendant who has counsel or who has voluntarily waived counsel may agree to the deferral of a prosecution for a specified period of time based on one or more of the following conditions:

(i) that the defendant may not commit any offense;

(ii) that the defendant may not engage in specified activities, conduct, and associations bearing a relationship to the conduct upon which the charge against the defendant is based;

(iii) that the defendant shall participate in a supervised rehabilitation program, which may include treatment, counseling, training, or education;

(iv) that the defendant shall make restitution in a specified manner for harm or loss caused by the offense; or

(v) any other reasonable conditions.

(b) The agreement must be in writing, must be signed by the parties, and must state that the defendant waives the right to speedy trial for the period of deferral. The agreement may include stipulations concerning the admissibility of evidence, specified testimony, or dispositions if the deferral of the prosecution is terminated and there is a trial on the charge.

(c) The prosecution must be deferred for the period specified in the agreement unless there has been a violation of its terms.

(d) The agreement must be terminated and the prosecution automatically dismissed with prejudice upon expiration and compliance with the terms of the agreement.

(2) A condition of pretrial diversion may be for the court to refer a defendant for evaluation to determine the appropriateness of proceedings pursuant to Title 53, chapter 21.

(3) Except as provided in 46-1-1104 and 46-1-1204, after a charge has been filed, a deferral of prosecution may be entered into only after the prosecutor provides notice to the court.

(4) A prosecution for a violation of ~~61-8-401, 61-8-406, 61-8-410, 61-8-411, or 61-8-465~~ [section 2] or aggravated driving under the influence as defined in [section 1] may not be deferred."

Section 25. Section 46-18-201, MCA, is amended to read:

"**46-18-201. Sentences that may be imposed.** (1) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition of sentence, except as otherwise specifically provided by statute, for a period:

(i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or

(ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense.

(3) (a) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may impose a sentence that may include:

(i) a fine as provided by law for the offense;

(ii) payment of costs, as provided in 46-18-232, or payment of costs of assigned counsel as provided in 46-8-113;

(iii) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a state prison to be designated by the department of corrections;

(iv) commitment of:

(A) an offender not referred to in subsection (3)(a)(iv)(B) to the department of corrections with a recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years of the commitment to the department of corrections must be suspended, except as provided in 45-5-503(4), 45-5-507(5), 45-5-601(3), 45-5-602(3), 45-5-603(2)(b), and 45-5-625(4); or

(B) a youth transferred to district court under 41-5-206 and found guilty in the district court of an

offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;

(v) chemical treatment of sexual offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person;

(vi) commitment of an offender to the department of corrections with the requirement that immediately subsequent to sentencing or disposition the offender is released to community supervision and that any subsequent violation must be addressed as provided in 46-23-1011 through 46-23-1015; or

(vii) any combination of subsection (2) and this subsection (3)(a).

(b) A court may permit a part or all of a fine to be satisfied by a donation of food to a food bank program.

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the sentencing judge may impose on the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) may include but are not limited to:

(a) limited release during employment hours as provided in 46-18-701;

(b) incarceration in a detention center not exceeding 180 days;

(c) conditions for probation;

(d) payment of the costs of confinement;

(e) payment of a fine as provided in 46-18-231;

(f) payment of costs as provided in 46-18-232 and 46-18-233;

(g) payment of costs of assigned counsel as provided in 46-8-113;

(h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available and that the offender is a suitable candidate, an order that the offender be placed in a chemical dependency treatment program, prerelease center, or prerelease program for a period not to exceed 1 year;

(j) community service;

(k) home arrest as provided in Title 46, chapter 18, part 10;

(l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

(m) participation in a day reporting program provided for in 53-1-203;

(n) participation in the 24/7 sobriety and drug monitoring program provided for in Title 44, chapter 4, part 12, for a violation of ~~61-8-465~~ aggravated driving under the influence as defined in [section 1], a ~~second or subsequent~~ violation of ~~61-8-401, 61-8-406, or 61-8-411~~ [section 2], or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime or for a violation of any statute involving domestic abuse or the abuse or neglect of a minor if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime regardless of whether the charge or conviction was for a first, second, or subsequent violation of the statute;

(o) participation in a restorative justice program approved by court order and payment of a participation fee of up to $150 for program expenses if the program agrees to accept the offender;

(p) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society;

(q) with approval of the program and confirmation by the department of corrections that space is available, an order that the offender be placed in a residential treatment program; or

(r) any combination of the restrictions or conditions listed in this subsection (4).

(5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended.

(6) (a) Except as provided in subsection (6)(b), in addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1) through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension of the license or driving privilege of the person must be

accomplished as provided in 61-5-214 through 61-5-217.

(b) A person's license or driving privilege may not be suspended due to nonpayment of fines, costs, or restitution.

(7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(8) If a felony sentence includes probation, the department of corrections shall supervise the offender unless the court specifies otherwise.

(9) When imposing a sentence under this section that includes incarceration in a detention facility or the state prison, as defined in 53-30-101, the court shall provide credit for time served by the offender before trial or sentencing.

(10) As used in this section, "dangerous drug" has the meaning provided in 50-32-101."

Section 26. Section 46-18-236, MCA, is amended to read:

"**46-18-236. (Temporary) Imposition of charge upon conviction or forfeiture -- administration.** (1) Except as provided in subsection (2), there must be imposed by all courts of original jurisdiction on a person upon conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail a charge that is in addition to other taxable court costs, fees, or fines, as follows:

(a) $15 for each misdemeanor charge;

(b) the greater of $20 or 10% of the fine levied for each felony charge; and

(c) an additional $50 for each misdemeanor and felony charge under Title 45~~, 61-8-401, 61-8-406, or 61-8-411~~ or [section 2].

(2) If a convicting court determines under 46-18-231 and 46-18-232 that the person is not able to pay the fine and costs or that the person is unable to pay within a reasonable time, the court shall waive payment of the charge imposed by this section.

(3) The charges imposed by this section are not fines and must be imposed in addition to any fine and may not be used in determining the jurisdiction of any court.

(4) When the payment of a fine is to be made in installments over a period of time, the charges

imposed by this section must be collected from the first payment made and each subsequent payment as necessary if the first payment is not sufficient to cover the charges.

(5) The charges collected under subsection (1), except those collected under subsections (1)(a) and (1)(b) by a justice's court, must be deposited with the appropriate local government finance officer or treasurer. If a city municipal court or city or town court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the city or town finance officer or treasurer. If a district court or justice's court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the county finance officer or treasurer. If the court of original jurisdiction is a court within a consolidated city-county government within the meaning of Title 7, chapter 3, the charges collected under subsection (1) must be deposited with the finance officer or treasurer of the consolidated government.

(6) (a) A city or town finance officer or treasurer may retain the charges collected under subsections (1)(a) and (1)(b) by a city municipal court or a city or town court and may use that money for the payment of salaries of the city or town attorney and deputies.

(b) Each county finance officer or treasurer may retain the charges collected under subsections (1)(a) and (1)(b) by district courts for crimes committed or alleged to have been committed within that county. The county finance officer or treasurer shall use the money for the payment of salaries of its deputy county attorneys and for the payment of other salaries in the office of the county attorney, and any funds not needed for those salaries may be used for the payment of any other county salaries.

(7) (a) Except as provided in subsection (7)(b), each county, city, or town finance officer or treasurer may retain the charges collected under subsection (1)(c) for payment of the expenses of a victim and witness advocate program, including a program operated by a private, nonprofit organization, that provides the services specified in Title 40, chapter 15, and Title 46, chapter 24, and that is operated or used by the county, city, or town.

(b) The appropriate county, city, or town finance officer or treasurer shall deposit $1 of each charge collected under subsection (1)(c) in the collecting court's fund for mitigation of administrative costs incurred by the court in the collection of the charge. The funds deposited under this subsection (7)(b) are not subject to allocation under 46-18-251.

(c) Except as provided in subsection (7)(b), if the county, city, or town does not operate or use a

victim and witness advocate program, all charges collected under subsection (1)(c) must be paid to the crime victims compensation and assistance program in the department of justice for deposit in the account provided for in 53-9-113. (Terminates June 30, 2021--sec. 27, Ch. 285, L. 2015; sec. 1, Ch. 292, L. 2015.)

46-18-236. (Effective July 1, 2021) Imposition of charge upon conviction or forfeiture -- administration. (1) Except as provided in subsection (2), there must be imposed by all courts of original jurisdiction on a person upon conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail a charge that is in addition to other taxable court costs, fees, or fines, as follows:

(a) $15 for each misdemeanor charge;

(b) the greater of $20 or 10% of the fine levied for each felony charge; and

(c) an additional $50 for each misdemeanor and felony charge under Title 45~~, 61-8-401, 61-8-406, or 61-8-411~~ or [section 2].

(2) If a convicting court determines under 46-18-231 and 46-18-232 that the person is not able to pay the fine and costs or that the person is unable to pay within a reasonable time, the court shall waive payment of the charge imposed by this section.

(3) The charges imposed by this section are not fines and must be imposed in addition to any fine and may not be used in determining the jurisdiction of any court.

(4) When the payment of a fine is to be made in installments over a period of time, the charges imposed by this section must be collected from the first payment made and each subsequent payment as necessary if the first payment is not sufficient to cover the charges.

(5) The charges collected under subsection (1), except those collected under subsections (1)(a) and (1)(b) by a justice's court, must be deposited with the appropriate local government finance officer or treasurer. If a city municipal court or city or town court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the city or town finance officer or treasurer. If a district court or justice's court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the county finance officer or treasurer. If the court of original jurisdiction is a court within a consolidated city-county government within the meaning of Title 7, chapter 3, the charges collected under subsection (1) must be deposited with the finance officer or treasurer of the consolidated government.

(6) (a) A city or town finance officer or treasurer may retain the charges collected under subsections

(1)(a) and (1)(b) by a city municipal court or a city or town court and may use that money for the payment of salaries of the city or town attorney and deputies.

(b) Each county finance officer or treasurer may retain the charges collected under subsections (1)(a) and (1)(b) by district courts for crimes committed or alleged to have been committed within that county. The county finance officer or treasurer shall use the money for the payment of salaries of its deputy county attorneys and for the payment of other salaries in the office of the county attorney, and any funds not needed for those salaries may be used for the payment of any other county salaries.

(7) (a) Except as provided in subsection (7)(b), each county, city, or town finance officer or treasurer may retain the charges collected under subsection (1)(c) for payment of the expenses of a victim and witness advocate program, including a program operated by a private, nonprofit organization, that provides the services specified in Title 40, chapter 15, and Title 46, chapter 24, and that is operated or used by the county, city, or town.

(b) The appropriate county, city, or town finance officer or treasurer shall deposit $1 of each charge collected under subsection (1)(c) in the collecting court's fund for mitigation of administrative costs incurred by the court in the collection of the charge. The funds deposited under this subsection (7)(b) are not subject to allocation under 46-18-251.

(c) Except as provided in subsection (7)(b), if the county, city, or town does not operate or use a victim and witness advocate program, all charges collected under subsection (1)(c) must be paid to the crime victims compensation and assistance program in the department of justice for deposit in the state general fund to be used to provide services to crime victims as provided in Title 53, chapter 9, part 1."

Section 27. Section 50-46-320, MCA, is amended to read:

"**50-46-320. Limitations of act.** (1) This part does not permit:

(a) any individual, including a registered cardholder, to operate, navigate, or be in actual physical control of a motor vehicle, aircraft, or motorboat while under the influence of marijuana; or

(b) except as provided in subsection (3), the use of marijuana by a registered cardholder:

(i) in a health care facility as defined in 50-5-101;

(ii) in a school or a postsecondary school as defined in 20-5-402;

(iii) on or in any property owned by a school district or a postsecondary school;

(iv) on or in any property leased by a school district or a postsecondary school when the property is being used for school-related purposes;

(v) in a school bus or other form of public transportation;

(vi) when ordered by any court of competent jurisdiction into a correctional facility or program;

(vii) if a court has imposed restrictions on the cardholder's use pursuant to 46-18-202;

(viii) at a public park, public beach, public recreation center, or youth center;

(ix) in or on the property of any church, synagogue, or other place of worship;

(x) in plain view of or in a place open to the general public; or

(xi) where exposure to the marijuana smoke significantly adversely affects the health, safety, or welfare of children.

(2) A registered cardholder, provider, or marijuana-infused products provider may not cultivate marijuana or manufacture marijuana concentrates or marijuana-infused products for use by a registered cardholder in a manner that is visible from the street or other public area.

(3) A hospice or residential care facility licensed under Title 50, chapter 5, may adopt a policy that allows use of marijuana by a registered cardholder.

(4) Nothing in this part may be construed to require:

(a) a government medical assistance program, a group benefit plan that is covered by the provisions of Title 2, chapter 18, an insurer covered by the provisions of Title 33, or an insurer as defined in 39-71-116 to reimburse an individual for costs associated with the use of marijuana by a registered cardholder;

(b) an employer to accommodate the use of marijuana by a registered cardholder;

(c) a school or postsecondary school to allow a registered cardholder to participate in extracurricular activities; or

(d) a property owner to allow a tenant who is a registered cardholder, provider, marijuana-infused products provider, dispensary, or testing laboratory to cultivate, manufacture, dispense, sell, or test marijuana, marijuana concentrates, or marijuana-infused products or to allow a registered cardholder to use marijuana.

(5) Nothing in this part may be construed to:

(a) prohibit an employer from including in any contract a provision prohibiting the use of marijuana for

a debilitating medical condition; or

(b) permit a cause of action against an employer for wrongful discharge pursuant to 39-2-904 or discrimination pursuant to 49-1-102.

(6) Nothing in this part may be construed to allow a provider, marijuana-infused products provider, or employee of a licensee to use marijuana or to prevent criminal prosecution of a provider, marijuana-infused products provider, or employee of a licensee who uses marijuana or paraphernalia for personal use.

(7) (a) A law enforcement officer who has reasonable cause to believe that an individual with a valid registry identification card is driving under the influence of marijuana may apply for a search warrant to require the individual to provide a sample of the individual's blood for testing pursuant to the provisions of ~~61-8-405~~ [section 11]. An individual with a delta-9-tetrahydrocannabinol level of 5 ng/ml may be charged with a violation of ~~61-8-401or 61-8-411~~ [section 2(1)(a) or (1)(e)].

(b) A registered cardholder, provider, or marijuana-infused products provider who violates subsection (1)(a) is subject to revocation of the individual's registry identification card or license if the individual is convicted of or pleads guilty to any offense related to driving under the influence of alcohol or drugs when the initial offense with which the individual was charged was a violation of ~~61-8-401, 61-8-406, 61-8-410, or 61-8-411~~ [section 2]. A revocation under this section must be for the period of suspension or revocation set forth:

(i) in 61-5-208 for a violation of ~~61-8-401, 61-8-406, or 61-8-411~~ [section 2(1)(a), (1)(b), (1)(c), or (1)(d)]; or

(ii) in ~~61-8-410~~ [section 3(3)] for a violation of ~~61-8-410~~ [section 2(1)(e)].

(c) If an individual's registry identification card or license is subject to renewal during the revocation period, the individual may not renew the card until the full revocation period has elapsed. The card or license may be renewed only if the individual submits all materials required for renewal.

(8) A provider or marijuana-infused products provider who violates 15-64-103 or 15-64-104 is subject to revocation of the person's license from the date of the violation until a period of up to 1 year after the department of revenue certifies compliance with 15-64-103 or 15-64-104."

Section 28. Section 53-9-103, MCA, is amended to read:

"**53-9-103. Definitions.** As used in this part, the following definitions apply:

(1) "Claimant" means any of the following claiming compensation under this part:

(a) a victim;

(b) a dependent of a deceased victim; or

(c) an authorized person acting on behalf of any of them.

(2) "Collateral source" means a source of benefits, other than welfare benefits, or advantages for economic loss otherwise compensable under this part that the claimant has received or that is readily available to the claimant from:

(a) the offender;

(b) the government of the United States or any agency thereof, a state or any of its political subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them excess or secondary to benefits under this part;

(c) social security, medicare, and medicaid;

(d) workers' compensation;

(e) wage continuation programs of any employer;

(f) proceeds of a contract of insurance payable to the claimant for loss that was sustained because of the criminally injurious conduct;

(g) a contract, including an insurance contract, providing hospital and other health care services or benefits for disability. A contract in this state may not provide that benefits under this part are a substitute for benefits under the contract or that the contract is a secondary source of benefits and benefits under this part are a primary source.

(h) a crime victims compensation program operated by the state in which the victim was injured or killed that compensates residents of this state injured or killed in that state; or

(i) any other third party.

(3) "Criminally injurious conduct" means conduct that:

(a) occurs or is attempted in this state or an act of international terrorism, as defined in 18 U.S.C. 2331, committed outside of the United States against a resident of this state;

(b) results in bodily injury or death or involves domestic violence in a home where minor children were present; and

(c) is punishable by fine, imprisonment, or death or would be so punishable except that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state; however, criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle unless the bodily injury or death occurred during the commission of an offense defined in Title 45 that requires the mental state of purposely as an element of the offense or the injury or death was inflicted by the driver of a motor vehicle who is found by the office, by a preponderance of the evidence, to have been operating the motor vehicle while under the influence, as that term is defined in ~~61-8-401~~ [section 1]; or

(d) is committed in a state without a crime victims compensation program that covers a resident of this state if the conduct meets the requirements in subsections (3)(b) and (3)(c).

(4) "Dependent" means a natural person who is recognized under the law of this state to be wholly or partially dependent upon the victim for care or support and includes a child of the victim conceived before the victim's death but born after the victim's death, including a child that is conceived as a result of the criminally injurious conduct.

(5) "Office" means the office of victims services established in 2-15-2016.

(6) "Victim" means:

(a) a person who suffers bodily injury or death as a result of:

(i) criminally injurious conduct;

(ii) the person's good faith effort to prevent criminally injurious conduct; or

(iii) the person's good faith effort to apprehend a person reasonably suspected of engaging in criminally injurious conduct; or

(b) a minor child present in a home where domestic violence occurred."

Section 29. Section 61-1-101, MCA, is amended to read:

"**61-1-101. Definitions.** As used in this title, unless the context indicates otherwise, the following definitions apply:

(1) (a) "Authorized agent" means a person who has executed a written agreement with the department and is specifically authorized by the department to electronically access and update the department's motor vehicle titling, registration, or driver records, using an approved automated interface, for

specific functions or purposes on behalf of a third party.

(b) For purposes of this subsection (1), "person" means an individual, corporation, partnership, limited partnership, limited liability company, association, joint venture, state agency, local government unit, another state government, the United States, a political subdivision of this or another state, or any other legal or commercial entity.

(2) "Authorized agent agreement" means the written agreement executed between an authorized agent and the department that sets the technical and operational program standards, compliance criteria, payment options, and service expectations by which the authorized agent is required to operate in performing specific motor vehicle or driver-related record functions.

(3) "Autocycle" means a three-wheeled motorcycle that is equipped with safety belts, roll bars or roll hoops, a steering wheel, and seating that does not require the operator to straddle or sit astride it.

(4) "Bus" means a motor vehicle designed for carrying more than 10 passengers and used for the transportation of persons and any other motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(5) (a) "Business entity" means a corporation, association, partnership, limited liability partnership, limited liability company, or other legal entity recognized under state law.

(b) The term does not include an individual.

(6) (a) "Camper" means a structure designed to be mounted in the cargo area of a truck or attached to an incomplete vehicle for the purpose of providing shelter for persons. The term includes but is not limited to a cab-over, half cab-over, noncab-over, telescopic, and telescopic cab-over.

(b) The term does not include a truck canopy cover or topper.

(7) "CDLIS driver record" means the electronic record of a person's commercial driver's license status and history stored as part of the commercial driver's license system established under 49 U.S.C. 31309.

(8) "Certificate of title" means the paper record issued by the department or by the appropriate agency of another jurisdiction that establishes a verifiable record of ownership between an identified person or persons and the motor vehicle specifically described in the record and that provides notice of a perfected security interest in the motor vehicle.

(9) "Commercial driver's license" means:

(a) a driver's license issued under or granted by the laws of this state that authorizes a person to operate a class of commercial motor vehicle; or

(b) the privilege of a person to drive a commercial motor vehicle, whether or not the person holds a valid commercial driver's license.

(10) (a) "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:

(i) has a gross combination weight rating or a gross combination weight of 26,001 pounds or more, whichever is greater, inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;

(ii) has a gross vehicle weight rating or a gross vehicle weight of 26,001 pounds or more, whichever is greater;

(iii) is designed to transport at least 16 passengers, including the driver;

(iv) is a school bus; or

(v) is of any size and is used in the transportation of hazardous materials.

(b) The following vehicles are not commercial motor vehicles:

(i) an authorized emergency vehicle:

(A) equipped with audible and visual signals as required under 61-9-401 and 61-9-402; and

(B) operated when responding to or returning from an emergency call or operated in another official capacity;

(ii) a vehicle:

(A) controlled and operated by a farmer, family member of the farmer, or person employed by the farmer;

(B) used to transport farm products, farm machinery, or farm supplies to or from the farm within Montana within 150 miles of the farm or, if there is a reciprocity agreement with a state adjoining Montana, within 150 miles of the farm, including any area within that perimeter that is in the adjoining state; and

(C) not used to transport goods for compensation or for hire; or

(iii) a vehicle operated for military purposes by active duty military personnel, a member of the military reserves, a member of the national guard on active duty, including personnel on full-time national guard duty, personnel in part-time national guard training, and national guard military technicians, or active duty United

States coast guard personnel.

(c) For purposes of this subsection (10):

(i) "farmer" means a person who operates a farm or who is directly involved in the cultivation of land or crops or the raising of livestock owned by or under the direct control of that person;

(ii) "gross combination weight rating" means the value specified by the manufacturer as the loaded weight of a combination or articulated vehicle;

(iii) "gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of a single vehicle; and

(iv) "school bus" has the meaning provided in 49 CFR 383.5.

(11) "Commission" means the state transportation commission.

(12) "Custom-built motorcycle" means a motorcycle that is equipped with:

(a) an engine that was manufactured 20 years prior to the current calendar year and that has been altered from the manufacturer's original design; or

(b) an engine that was manufactured to resemble an engine 20 or more years old and that has been constructed in whole or in part from nonoriginal materials.

(13) "Custom vehicle" means a motor vehicle other than a motorcycle that:

(a) (i) was manufactured with a model year after 1948 and that is at least 25 years old; or

(ii) was built to resemble a vehicle manufactured after 1948 and at least 25 years before the current calendar year, including a kit vehicle intended to resemble a vehicle manufactured after 1948 and that is at least 25 years old; and

(b) has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

(14) "Customer identification number" means:

(a) a driver's license or identification card number when the customer is an individual who has been issued a driver's license or identification card by a state driver licensing authority;

(b) a federal employer or tax identification number when the customer is a business entity that has been issued a federal employer or tax identification number;

(c) the identification number assigned by the secretary of state to a business entity authorized to do

business in this state under Title 35 if the customer is a business entity that does not have a federal employer or tax identification number other than a social security number; or

(d) if the customer has not been issued one of the numbers described in subsections (14)(a) through (14)(c), a number assigned to the customer by the department when a transaction is initiated under this title.

(15) (a) "Dealer" means a person that, for commission or profit, engages in whole or in part in the business of buying, selling, exchanging, or accepting on consignment new or used motor vehicles, trailers, semitrailers, pole trailers, travel trailers, motorboats, sailboats, snowmobiles, off-highway vehicles, or special mobile equipment that is not registered in the name of the person.

(b) The term does not include the following:

(i) receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under a judgment or order of any court of competent jurisdiction;

(ii) employees of the persons included in subsection (15)(b)(i) when engaged in the specific performance of their duties as employees; or

(iii) public officers while performing or in the operation of their duties.

(16) "Declared weight" means the total unladen weight of a vehicle plus the weight of the maximum load to be carried on the vehicle as stated by the registrant in the application for registration.

(17) "Department" means the department of justice acting directly or through its duly authorized officers or agents.

(18) "Dolly or converter gear" means a device consisting of one or two axles with a fifth wheel and trailer tongue used to support the forward end of a semitrailer, converting a semitrailer into a trailer.

(19) "Domiciled" means a place where:

(a) an individual establishes residence;

(b) a business entity maintains its principal place of business;

(c) the business entity's registered agent maintains an address; or

(d) a business entity most frequently uses, dispatches, or controls a motor vehicle, trailer, semitrailer, or pole trailer that it owns or leases.

(20) "Downgrade" means the removal of a person's privilege to operate a commercial motor vehicle, as maintained by the department on the individual Montana driving record and the CDLIS driver record for that

person.

(21) "Driver" means a person who drives or is in actual physical control of a vehicle.

(22) "Driver's license" means a license or permit to operate a motor vehicle issued under or granted by the laws of this state, including:

(a) any temporary license or learner license;

(b) the privilege of any person to drive a motor vehicle, whether or not the person holds a valid license;

(c) any nonresident's driving privilege;

(d) a motorcycle endorsement; or

(e) a commercial driver's license.

(23) "Electric personal assistive mobility device" means a device that has two nontandem wheels, is self-balancing, and is designed to transport only one person with an electric propulsion system that limits the maximum speed of the device to 12 1/2 miles an hour.

(24) "For hire" means an action performed for remuneration of any kind, whether paid or promised, either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements from which a remuneration is obtained or derived for transportation service.

(25) (a) "Golf cart" means a motor vehicle that is designed for use on a golf course to carry a person or persons and golf equipment and that has an average speed of less than 15 miles per hour.

(b) Except as provided in 61-3-201, a golf cart is exempt from titling, registration, and mandatory liability insurance requirements under this title.

(26) "Gross vehicle weight" means the weight of a vehicle without load plus the weight of any load on the vehicle.

(27) "Hazardous material" means:

(a) any material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under 49 CFR, part 172; or

(b) any quantity of a material listed as a select agent or toxin in 42 CFR, part 73.

(28) "Highway" or "public highway" means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to the use of the public for

purposes of vehicular travel.

(29) "Highway patrol officer" means a state officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

(30) "Implement of husbandry" means a vehicle that is designed for agricultural purposes and exclusively used by the owner of the vehicle in the conduct of the owner's agricultural operations.

(31) "Kit vehicle" is a motor vehicle assembled from a manufactured kit either as:

(a) a complete kit, consisting of a prefabricated body and chassis, to construct a new motor vehicle; or

(b) a kit with a prefabricated body to be mounted to an existing motor vehicle chassis and drivetrain, commonly referred to as a donor vehicle.

(32) "Light vehicle" means a motor vehicle commonly referred to as an automobile, van, sport utility vehicle, or truck having a manufacturer's rated capacity of 1 ton or less.

(33) "Low-speed electric vehicle" means a motor vehicle, on or by which a person may be transported, that:

(a) has four wheels;

(b) has a maximum speed of at least 20 miles an hour and no greater than 40 miles an hour as certified by the manufacturer;

(c) is propelled by its own power, using an electric motor or other device that transforms stored electrical energy into the motion of the vehicle;

(d) stores electricity in batteries, ultracapacitors, or similar devices, which are charged from the power grid or from renewable electrical energy sources;

(e) has a wheelbase of 40 inches or greater and a wheel diameter of 10 inches or greater;

(f) exhibits a manufacturer's compliance with 49 CFR, part 565, or displays a 17-character vehicle identification number as provided in 49 CFR, part 565; and

(g) is equipped as provided in 61-9-432.

(34) "Low-speed restricted driver's license" means a license limited to the operation of a low-speed electric vehicle or a golf cart issued under or granted by the laws of this state, including:

(a) a temporary license or learner license;

(b) the privilege of a person to drive a low-speed electric vehicle or golf cart under the authority of 61-5-122, whether or not the person holds a valid driver's license; and

(c) a nonresident's similarly restricted driving privilege.

(35) "Manufactured home" has the meaning provided in 15-24-201.

(36) "Manufacturer" includes any person engaged in the manufacture of motor vehicles, trailers, semitrailers, pole trailers, travel trailers, motorboats, sailboats, snowmobiles, or off-highway vehicles as a regular business.

(37) "Manufacturer's certificate of origin" means the original paper record produced and issued by the manufacturer of a vehicle or, if in a medium authorized by the department, an electronic record created and transmitted by the manufacturer of a vehicle to the manufacturer's agent or a licensed dealer. The record must establish the origin of the vehicle specifically described in the record and, upon assignment, transfers of ownership of the vehicle to the person or persons named in the certificate.

(38) (a) "Medium-speed electric vehicle" is a motor vehicle, on or by which a person may be transported, that:

(i) has a maximum speed of 45 miles an hour as certified by the manufacturer;

(ii) is propelled by its own power, using an electric motor or other device that transforms stored electrical energy into the motion of the vehicle;

(iii) stores electricity in batteries, ultracapacitors, or similar devices, which are charged from the power grid or from renewable electrical energy sources;

(iv) is fully enclosed and includes at least one door for entry;

(v) has a wheelbase of 40 inches or greater and a wheel diameter of 10 inches or greater;

(vi) exhibits a manufacturer's compliance with 49 CFR, part 565, or displays a 17-character vehicle identification number as provided in 49 CFR, part 565;

(vii) bears a sticker, affixed by the manufacturer or dealer, on the left side of the rear window that indicates the vehicle's maximum speed rating; and

(viii) as certified by the manufacturer, is equipped as provided in 61-9-432.

(b) A medium-speed electric vehicle must be treated as a light vehicle for purposes of titling and registration under Title 61, chapter 3.

(c) A medium-speed electric vehicle may not have a gross vehicle weight in excess of 5,000 pounds.

(39) "Mobile home" or "housetrailer" has the meaning provided in 15-24-201.

(40) "Montana resident" means:

(a) an individual who resides in Montana as determined under 1-1-215; or

(b) for the purposes of chapter 3, a business entity that maintains a principal place of business or a registered agent in this state.

(41) (a) "Motorboat" means a vessel, including a personal watercraft or pontoon, propelled by any machinery, motor, or engine of any description, whether or not the machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines.

(b) The term does not include a vessel that has a valid marine document issued by the U.S. coast guard or any successor federal agency.

(42) (a) "Motor carrier" means a person or corporation or its lessees, trustees, or receivers appointed by a court that are operating motor vehicles on a public highway in this state for the transportation of property for hire on a commercial basis.

(b) The term does not include motor carriers regulated under Title 69, chapter 12.

(43) (a) "Motorcycle" means a motor vehicle that has a seat or saddle for the use of the operator and that is designated to travel on not more than three wheels in contact with the ground. A motorcycle may carry one or more attachments and a seat for the conveyance of a passenger.

(b) A motorcycle designed for use on highways is a motor vehicle unless otherwise prescribed.

(c) A motorcycle designed for off-road recreational use is an off-highway vehicle unless it has been modified to meet the equipment standards specified in chapter 9 and has been registered for highway use.

(d) The term includes an autocycle.

(e) The term does not include a tractor, a bicycle or a moped as defined in 61-8-102, a motorized nonstandard vehicle, or a two- or three-wheeled all-terrain vehicle that is used exclusively on private property.

(44) (a) "Motor-driven cycle" means a motorcycle, including a motor scooter, with a motor that produces 5 horsepower or less.

(b) The term does not include a bicycle or a moped, as defined in 61-8-102, or a motorized nonstandard vehicle.

(45) "Motor home" means a motor vehicle:

(a) designed to provide temporary living quarters, built as an integral part of or permanently attached to a self-propelled motor vehicle chassis or van;

(b) containing permanently installed independent life support systems that meet the ANSIA/A119.2 standard; and

(c) providing at least four of the following types of facilities:

(i) cooking, refrigeration, or icebox;

(ii) self-contained toilet;

(iii) heating or air conditioning, or both;

(iv) potable water supply, including a faucet and sink; or

(v) separate 110-volt or 125-volt electrical power supply or a liquefied petroleum gas supply, or both.

(46) (a) "Motorized nonstandard vehicle" means a vehicle, on or by which a person may be transported, that:

(i) is propelled by its own power, using an internal combustion engine or an electric motor;

(ii) has a wheelbase of less than 40 inches and a wheel diameter of less than 10 inches; and

(iii) does not display a manufacturer's certification in accordance with 49 CFR, part 567, or have a 17-character vehicle identification number assigned by the manufacturer in accordance with 49 CFR, part 565.

(b) The term includes but is not limited to a motorized skateboard and a vehicle commonly known as a "pocket rocket".

(c) The term does not include a moped as defined in 61-8-102, an electric personal assistive mobility device, or a motorized wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person.

(47) (a) "Motor vehicle" means:

(i) a vehicle propelled by its own power and designed or used to transport persons or property on the highways of the state;

(ii) a quadricycle if it is equipped for use on the highways as prescribed in chapter 9; or

(iii) a golf cart only if it is equipped for use on the highways as prescribed in chapter 9 and is operated pursuant to 61-8-391 or by a person with a low-speed restricted driver's license.

(b) The term does not include a bicycle or a moped as defined in 61-8-102, an electric personal assistive mobility device, a motorized nonstandard vehicle, or a motorized wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.

(48) "New motor vehicle" means a motor vehicle, regardless of the mileage of the vehicle, the legal or equitable title to which has never been transferred by a manufacturer, distributor, or dealer to another person as the result of a retail sale.

(49) "Nonresident" means a person who is not a Montana resident.

(50) (a) "Not used for general transportation purposes" means the operation of a motor vehicle registered as a collector's item, a custom vehicle, a street rod, or a custom-built motorcycle to or from a car or motorcycle club activity or event or an exhibit, show, cruise night, or parade, or for other occasional transportation activity.

(b) The term does not include operation of a motor vehicle for routine or ordinary household maintenance, employment, education, or other similar purposes.

(51) (a) "Off-highway vehicle" means a self-propelled vehicle designed for recreation or cross-country travel on public lands, trails, easements, lakes, rivers, or streams. The term includes but is not limited to motorcycles, quadricycles, dune buggies, amphibious vehicles, air cushion vehicles, and any other means of land transportation deriving motive power from any source other than muscle or wind.

(b) The term does not include:

(i) vehicles designed primarily for travel on, over, or in the water;

(ii) snowmobiles; or

(iii) motor vehicles designed to transport persons or property on the highways unless the vehicle is used for off-road recreation on public lands.

(52) "Operator" means a person who is in actual physical control of a motor vehicle.

(53) "Owner" means a person who holds the legal title to a vehicle. If a vehicle is the subject of an agreement for the conditional sale of the vehicle with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or in the event a vehicle is subject to a lease, contract, or other legal arrangement vesting right of possession or control,

for security or otherwise, or in the event a mortgagor of a vehicle is entitled to possession, then the owner is the person in whom is vested the right of possession or control.

(54) "Person" means an individual, corporation, partnership, association, firm, or other legal entity.

(55) "Personal watercraft" means a vessel that uses an outboard motor or an inboard engine powering a water jet pump as its primary source of propulsion and that is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than by the conventional method of sitting or standing in the vessel.

(56) "Pole trailer" means a vehicle without power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable generally of sustaining themselves as beams between the supporting connections.

(57) "Police officer" means an officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

(58) (a) "Quadricycle" means a four-wheeled motor vehicle, designed for on-road or off-road use, having a seat or saddle on which the operator sits.

(b) The term does not include golf carts.

(59) "Railroad" means a carrier of persons or property on cars, other than streetcars, operated on stationary rails.

(60) (a) "Railroad train" or "train" means a steam engine or electric or other motor, with or without cars coupled to the engine, that is operated on rails.

(b) The term does not include streetcars.

(61) "Recreational vehicle" includes a motor home, travel trailer, or camper.

(62) "Registration" or "register" means the act or process of creating an electronic record, maintained by the department, of the assignment of a license plate or a set of license plates to and the issuance of a registration decal for a specific vehicle, the ownership of which has been established or is presumed in department records.

(63) "Registration decal" means an adhesive sticker produced by the department and issued by the department, its authorized agent, or a county treasurer to the owner of a motor vehicle, trailer, semitrailer, pole trailer, motorboat, sailboat, personal watercraft, or snowmobile as proof of payment of all fees imposed for the

registration period indicated on the sticker as recorded by the department under 61-3-101.

(64) "Registration receipt" means a paper record that is produced and issued or, if authorized by the department, an electronic record that is transmitted by the department, its authorized agent, or a county treasurer to the owner of a vehicle that identifies a vehicle, based on information maintained in the electronic record of title for the vehicle, and that provides evidence of the payment of all fees required to be paid for the registration of the vehicle for the registration period indicated in the receipt.

(65) "Retail sale" means the sale of a motor vehicle, trailer, semitrailer, pole trailer, travel trailer, motorboat, snowmobile, off-highway vehicle, or special mobile equipment by a dealer to a person for purposes other than resale.

(66) "Revocation" means the termination by action of the department of a person's driver's license, privilege to drive a motor vehicle on the public highways, and privilege to apply for and be issued a driver's license for a period of time designated by law, during which the license or privilege may not be renewed, restored, or exercised. An application for a new license may be presented and acted on by the department after the expiration of the period of the revocation.

(67) "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event that a highway includes two or more separate roadways, the term refers to any roadway separately but not to all roadways collectively.

(68) (a) "Sailboat" means a vessel that uses a sail and wind as its primary source of propulsion.

(b) The term does not include a canoe or kayak propelled by wind.

(69) "School zone" means an area near a school beginning at the school's front door, encompassing the campus and school property, and including the streets directly adjacent to the school property and for as many blocks surrounding the school as determined by the local authority establishing a special speed limit under 61-8-310(1)(d).

(70) "Sell" means to transfer ownership from one person to another person or from a dealer to another person for consideration.

(71) "Semitrailer" means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that some part of its weight and that of its load rests on or is carried by another vehicle.

(72) "Snowmobile" means a self-propelled vehicle of an overall width of 48 inches or less, excluding accessories, that is designed primarily for travel on snow or ice, that may be steered by skis or runners, and that is not otherwise registered or licensed under the laws of the state of Montana.

(73) "Special mobile equipment" means a vehicle not designed for the transportation of persons or property on the highways but incidentally operated or moved over the highways, including road construction or maintenance machinery, ditch-digging apparatus, and well-boring apparatus. The fact that equipment is permanently attached to a vehicle does not make the vehicle special mobile equipment. The enumeration in this subsection is partial and does not exclude other vehicles that are within the general terms of this subsection.

(74) (a) "Specially constructed vehicle" means a motor vehicle, including a motorcycle, that:

(i) was not originally constructed under a distinctive make, model, or type by a generally recognized manufacturer of motor vehicles;

(ii) has been structurally modified so that it does not have the same appearance as similar vehicles from a generally recognized manufacturer of motor vehicles;

(iii) has been constructed or assembled entirely from custom-built parts and materials not obtained from other vehicles;

(iv) has been constructed or assembled by using major component parts from one or more manufactured vehicles and that cannot be identified as a specific make or model; or

(v) has been constructed by the use of a kit that cannot be visually identified as a specific make or model.

(b) The term does not include a motor vehicle that has been repaired or restored to its original design by replacing parts.

(75) (a) "Sport utility vehicle" means a light vehicle designed to transport 10 or fewer persons that is constructed on a truck chassis or that has special features for occasional off-road use.

(b) The term does not include trucks having a manufacturer's rated capacity of 1 ton or less.

(76) (a) "Stop", when required, means complete cessation from movement.

(b) "Stop", "stopping", or "standing", when prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the

directions of a police officer, highway patrol officer, or traffic control sign or signal.

(77) "Storage lot" means property owned, leased, or rented by a dealer that is not contiguous to the dealer's established place of business where a motor vehicle from the dealer's inventory may be placed when space at the dealer's established place of business is not available.

(78) "Street" means the entire width between the boundary lines of every publicly maintained way when any part of the publicly maintained way is open to the use of the public for purposes of vehicular travel.

(79) "Street rod" means a motor vehicle, other than a motorcycle, that:

(a) was manufactured prior to 1949 or was built to resemble a vehicle manufactured before 1949, including a kit vehicle intended to resemble a vehicle manufactured before 1949; and

(b) has been altered from the manufacturer's original design or has a body constructed from nonoriginal materials.

(80) "Suspension" means the temporary withdrawal by action of the department of a person's driver's license, privilege to drive a motor vehicle on the public highways, and privilege to apply for or be issued a driver's license for a period of time designated by law.

(81) "Temporary registration permit" means a paper record:

(a) issued by the department, an authorized agent, a county treasurer, or a person, using a department-approved electronic interface after an electronic record has been transmitted to the department, that contains:

(i) required vehicle and owner information; and

(ii) the purpose for which the record was generated; and

(b) that, when placed in a durable license-plate style plastic pouch approved by the department and displayed as prescribed in 61-3-224, authorizes a person to operate the described motor vehicle, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for:

(i) 40 days from the date the record is issued or until the vehicle is registered under Title 23 or this title, whichever first occurs; or

(ii) 90 days from the date the record is issued for a permit issued pursuant to 61-3-303(3)(b).

(82) "Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highways for purposes of travel.

(83) (a) "Trailer" means a vehicle, with or without motive power, other than a pole trailer, designed for carrying property and for being drawn by a motor vehicle and constructed so that no part of its weight rests on the towing vehicle.

(b) The term does not include a mobile home or a manufactured home, as defined in 15-1-101.

(84) "Transaction summary receipt" means an electronic record produced and issued by the department, its authorized agent, or a county treasurer for which a paper receipt is issued. The record may be created by the department and transmitted to the owner of a vehicle, a secured party, or a lienholder. The record must contain a unique transaction record number and summarize and verify the electronic filing of the transaction described in the receipt on the electronic record of title maintained under 61-3-101.

(85) "Travel trailer" means a vehicle:

(a) that is 40 feet or less in length;

(b) that is of a size or weight that does not require special permits when towed by a motor vehicle;

(c) with gross trailer area of less than 320 square feet; and

(d) that is designed to provide temporary facilities for recreational, travel, or camping use and not used as a principal residence.

(86) "Truck" or "motortruck" means a motor vehicle designed, used, or maintained primarily for the transportation of property.

(87) "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load drawn.

(88) "Under the influence" has the meaning provided in ~~61-8-401~~ [section 1].

(89) "Used motor vehicle" includes any motor vehicle that has been sold, bargained, exchanged, or given away or had its title transferred from the person who first took title to it from the manufacturer, importer, dealer, wholesaler, or agent of the manufacturer or importer and that has been used so as to have become what is commonly known as "secondhand" within the ordinary meaning of that term.

(90) "Van" means a motor vehicle designed for the transportation of at least six persons and not more than nine persons and intended for but not limited to family or personal transportation without compensation.

(91) (a) "Vehicle" means a device in, on, or by which any person or property may be transported or drawn on a public highway, except devices moved by animal power or used exclusively on stationary rails or

tracks.

(b) The term does not include a manually or mechanically propelled wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person.

(92) "Vehicle identification number" means the number, letters, or combination of numbers and letters assigned by the manufacturer, by the department, or in accordance with the laws of another state or country for the purpose of identifying the motor vehicle or a component part of the motor vehicle.

(93) "Vessel" means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

(94) "Wholesaler" means a person that for a commission or with intent to make a profit or gain of money or other thing of value sells, exchanges, or attempts to negotiate a sale or exchange of an interest in a used motor vehicle, trailer, semitrailer, pole trailer, travel trailer, motorboat, snowmobile, off-highway vehicle, or special mobile equipment only to dealers and auto auctions licensed under chapter 4, part 1."

Section 30. Section 61-2-107, MCA, is amended to read:

"**61-2-107. License reinstatement fee to fund county drinking and driving prevention programs.** (1) Notwithstanding the provisions of any other law of the state, a driver's license that has been suspended or revoked under 61-5-205 or ~~61-8-402~~ [section 8] must remain suspended or revoked until the driver has paid to the department a fee of $200 in addition to any other fines, forfeitures, and penalties assessed as a result of conviction for a violation of the traffic laws of the state.

(2) The department shall deposit one-half of the fees collected under subsection (1) in the general fund and the other half in an account in the state special revenue fund to be used for funding county drinking and driving prevention programs as provided in 61-2-108."

Section 31. Section 61-2-302, MCA, is amended to read:

"**61-2-302. Establishment of driver rehabilitation and improvement program -- participation by offending drivers.** (1) The department may establish by administrative rule a driver rehabilitation and improvement program or programs. The programs may consist of electronic or classroom instruction in rules of

the road, driving techniques, defensive driving, driver attitudes and habits, actual on-the-road driver's training, and other subjects or tasks designed to contribute to proper driving attitudes, habits, and techniques and must include the requirements for obtaining a restricted probationary driver's license.

(2) Except when otherwise provided or restricted by statute, a person whose driver's license is suspended or revoked by the department, unless the suspension or revocation was for an offense under ~~61-8-401, 61-8-406, or 61-8-411~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)], may participate in any driver rehabilitation and improvement program established under this section if the person's license is:

(a) suspended as a result of a violation of the traffic laws of this state, unless the suspension was imposed under the authority provided in Title 61, chapter 8, part 8; or

(b) revoked and the person has:

(i) completed at least 3 months of a 1-year revocation; or

(ii) completed 1 year of a 3-year revocation; and

(iii) met the requirements for reobtaining a Montana driver's license.

(3) Notwithstanding any provision of this part inconsistent with any other law of the state of Montana, the enforcement of any suspension or revocation order that constitutes the basis for any person's participation in the driver rehabilitation and improvement program provided for in this section may be stayed if that person complies with the requirements established for the driver rehabilitation and improvement program and meets the eligibility requirements of subsection (2).

(4) If a person's driver's license has been surrendered before the person's selection for participation in the driver rehabilitation and improvement program, the license may be returned upon receipt of the person's agreement to participate in the program.

(5) The stay of enforcement of any suspension or revocation action must be terminated and the suspension or revocation action must be reinstated if a person declines to participate in the driver rehabilitation and improvement program or fails to meet the attendance or other requirements established for participation in the program.

(6) This part does not create a right to be included in any program established under this part.

(7) The department may establish a schedule of fees that may be charged to those persons participating in the driver improvement and rehabilitation program. The fees must be used to help defray costs

of maintaining the program.

(8) A person may be referred to this program by a driver improvement analyst, city judge, justice of the peace, youth court judge, or judge of a district court of the state.

(9) (a) Except as provided in subsection (9)(b), the department may issue a restricted probationary license to any person who enrolls and participates in the driver rehabilitation and improvement program. Upon issuance of a probationary license under this section, the licensee is subject to the restrictions set forth on the license.

(b) The department may not issue a restricted probationary license that would permit an individual to drive a commercial motor vehicle during a period in which:

(i) the individual is disqualified from operating a commercial motor vehicle under state or federal law; or

(ii) the individual's driver's license or driving privilege is revoked, suspended, or canceled.

(10) It is a misdemeanor for a person to operate a motor vehicle in any manner in violation of the restrictions imposed on a restricted license issued to the person under this section."

Section 32. Section 61-5-205, MCA, is amended to read:

"**61-5-205. Mandatory revocation or suspension of license upon certain convictions -- duration of action -- exceptions.** (1) The department shall revoke an individual's driver's license or driving privilege if the department receives notice from a court or another licensing jurisdiction that the individual has been convicted of any of the following offenses:

(a) negligent homicide resulting from the operation of a motor vehicle;

(b) any felony in the commission of which a motor vehicle is used;

(c) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

(d) perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of motor vehicles;

(e) fleeing from or eluding a peace officer; or

(f) negligent vehicular assault as defined in 45-5-205 involving a motor vehicle.

(2) The department shall suspend an individual's driver's license or driving privilege if the department receives notice from a court or another licensing jurisdiction that the individual has been convicted of any of the following offenses:

(a) a driving offense under ~~61-8-401, 61-8-406, or 61-8-411~~ [section 2];

(b) three reckless driving offenses committed within a period of 12 months; or

(c) a theft offense under 45-6-301 if the theft consisted of theft of motor vehicle fuel and a motor vehicle was used in the commission of the offense.

(3) A revocation under subsections (1)(a), (1)(b), and (1)(d) through (1)(f) must be for a period of 1 year. A revocation under subsection (1)(c) must be for a period of 2 years if the offender received a felony conviction under 61-7-103.

(4) (a) Except as provided in subsections (4)(b) and (4)(c), a suspension under subsection (2) must be for a period of 1 year.

(b) A suspension under subsection (2)(a) must be for the period set forth in 61-5-208.

(c) A suspension under subsection (2)(c) must be for one of the following periods:

(i) 30 days for a first offense;

(ii) 6 months for a second offense; and

(iii) 1 year for a third or subsequent offense."

Section 33. Section 61-5-208, MCA, is amended to read:

"**61-5-208. Period of suspension or revocation -- limitation on issuance of probationary license -- notation on driver's license.** (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways, except as permitted by law.

(2) (a) Except as provided in 44-4-1205 and 61-2-302 and except as otherwise provided in this section, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored until the revocation or suspension period has been completed.

(b) Subject to 61-5-231 and except as provided in subsection (4) of this section:

(i) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a

first offense of violating ~~61-8-401, 61-8-406, 61-8-411, or 61-8-465~~ [section 2], the department shall suspend the driver's license or driving privilege of the person for a period of 6 months;

(ii) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a second offense of violating ~~61-8-401, 61-8-406, 61-8-411, or 61-8-465~~ [section 2] within the time period specified in ~~61-8-734~~ [section 2], the department shall suspend the driver's license or driving privilege of the person for a period of 1 year and may not issue a probationary license during the period of suspension unless the person completes at least 45 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a probationary driver's license be issued subject to the requirements of ~~61-8-442~~ [section 6]. If the 1-year suspension period passes and the person has not completed chemical dependency treatment, as required under ~~61-8-732~~ [section 2], the license suspension remains in effect until treatment is completed.

(iii) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a third or subsequent offense of violating ~~61-8-401, 61-8-406, 61-8-411, or 61-8-465~~ [section 2] within the time period specified in ~~61-8-734~~ [section 2], the department shall suspend the driver's license or driving privilege of the person for a period of 1 year and may not issue a probationary license during the period of suspension unless the person completes at least 90 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a probationary driver's license be issued subject to the requirements of ~~61-8-442~~ [section 6]. If the 1-year suspension period passes and the person has not completed chemical dependency treatment, as required under ~~61-8-732~~ [section 2], the license suspension remains in effect until treatment is completed.

(3) (a) Except as provided in subsection (3)(b), the period of suspension or revocation for a person convicted of any offense that makes mandatory the suspension or revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

(b) A suspension commences from the last day of the prior suspension or revocation period if the suspension is for a conviction of driving with a suspended or revoked license.

(4) If a person is convicted of a violation of ~~61-8-401, 61-8-406, 61-8-411, or 61-8-465~~ [section 2] while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802.

(5) (a) A driver's license that is issued after a license revocation to a person described in subsection (5)(b) must be clearly marked with a notation that conveys the term of the person's probation restrictions.

(b) The provisions of subsection (5)(a) apply to a license issued to a person for whom a court has reported a felony conviction under ~~61-8-731~~ [section 4], the judgment for which has as a condition of probation that the person may not operate a motor vehicle unless:

(i) operation is authorized by the person's probation officer; or

(ii) a motor vehicle operated by the person is equipped with an ignition interlock device."

Section 34. Section 61-5-212, MCA, is amended to read:

"**61-5-212. Driving while license suspended or revoked -- penalty -- second offense of driving without licensing exemption.** (1) (a) A person commits the offense of driving a motor vehicle without statutory exemption or during a suspension or revocation period if the person drives:

(i) a motor vehicle on any public highway of this state at a time when the person's privilege to drive or apply for and be issued a driver's license is suspended or revoked in this state or any other state unless the person has obtained a restricted-use driving permit under 61-5-232;

(ii) a commercial motor vehicle while the person's commercial driver's license is revoked, suspended, or canceled in this state or any other state or the person is disqualified from operating a commercial motor vehicle or from obtaining a commercial driver's license; or

(iii) a motor vehicle on any public highway of this state without proof of a statutory exemption, as provided in 61-5-104.

(b) (i) A person convicted of the offense of driving a motor vehicle without proof of a statutory exemption for the second time shall be punished by imprisonment for not less than 2 days or more than 6 months and may be fined not more than $500.

(ii) Except as provided in subsection (1)(b)(iii), a person convicted of the offense of driving during a suspension or revocation period shall be fined an amount not to exceed $500 or be imprisoned for a term of not more than 6 months, or both.

(iii) If the reason for the suspension or revocation was that the person was convicted of a violation of ~~61-8-401, 61-8-406, or 61-8-411~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] or a similar offense under the

laws of any other state or the suspension was under ~~61-8-402 or 61-8-409~~ [section 8] or a similar law of any other state for refusal to take a test for alcohol or drugs requested by a peace officer who believed that the person might be driving under the influence, the person shall be imprisoned for a term of not less than 2 days or more than 6 months or be fined an amount not to exceed $2,000, or both, and in addition, the court may order the person to perform up to 40 hours of community service.

(2) (a) Upon receiving a record of the conviction of any person under this section upon a charge of driving a noncommercial vehicle while the person's driver's license, privilege to drive, or privilege to apply for and be issued a driver's license was suspended or revoked, the department shall extend the period of suspension or revocation for an additional 1-year period.

(b) Upon receiving a record of the conviction of any person under this section upon a charge of driving a commercial motor vehicle while the person's commercial driver's license was revoked, suspended, or canceled or the person was disqualified from operating a commercial motor vehicle under federal regulations, the department shall suspend the person's commercial driver's license in accordance with 61-8-802."

Section 35. Section 61-5-218, MCA, is amended to read:

"**61-5-218. License reinstatement fee following license suspension or revocation.** (1) Except as provided in subsection (2), a person whose driver's license, other than a commercial driver's license, or driving privilege has been suspended or revoked shall pay a reinstatement fee of $100 to the department to have the driver's license or driving privilege reinstated.

(2) (a) A person whose driver's license or driving privilege was suspended or revoked under 61-5-205 or ~~61-8-402~~ [section 8] shall pay a reinstatement fee as required by 61-2-107.

(b) A driver's license or driving privilege that was suspended or revoked under 61-5-207 must be reinstated without payment of a reinstatement fee.

(c) The reinstatement fee required under subsection (1) must be waived by the department when a court notifies the department that the person has satisfied the requirements of 61-5-214(2) and the court has determined that the person is indigent under the standards set forth in 47-1-111.

(3) The department shall deposit the fees collected under subsection (1) in the general fund."

Section 36. Section 61-5-231, MCA, is amended to read:

"**61-5-231. Authorization of probationary license by DUI court ~~-- definition~~.** (1) If a person convicted of a second or subsequent misdemeanor offense of driving under the influence of alcohol or drugs under ~~61-8-401 or 61-8-411~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)], driving with excessive alcohol concentration under ~~61-8-406~~ [section 2], or aggravated driving under the influence ~~under 61-8-465~~ as defined in [section 1] is participating in a DUI court as defined in [section 1], the court may, in the court's discretion, authorize a probationary driver's license for the participant subject to ~~61-8-442~~ [section 6] and any other conditions imposed within the scope of the court's authority.

(2) If the participant fails to comply with the court's conditions, the court may revoke the probationary driver's license and impose a driver's license suspension for the time period established pursuant to 61-5-208 commencing from the date of the court's revocation of the probationary license.

~~(3) For purposes of this section, "DUI court" means any court that has established a special docket for handling cases involving persons charged with violations under 61-8-401, 61-8-406, 61-8-411, or 61-8-465 and that implements a program of incentives and sanctions intended to assist a participant in completing treatment ordered pursuant to 61-8-732 and ending the participant's criminal behavior associated with driving under the influence of alcohol or drugs or with excessive alcohol concentration.~~"

Section 37. Section 61-5-405, MCA, is amended to read:

"**61-5-405. Offenses furnishing ground for suspension or revocation of license -- return to licensing jurisdiction of abstracts of court records and reports of conviction.** (1) Items enumerated in Article IV(1), subsections (a), (b), (c), and (d), of 61-5-401 refer specifically to 45-5-103, 45-5-104, ~~61-8-401~~ [section 2], the definition of felony as provided in 45-2-101, and 61-7-105, respectively.

(2) In addition to convictions mentioned in subsection (1), the department, for the purpose of suspension, revocation, or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported as it would if the conduct had occurred in this state for:

(a) convictions of perjury or the making of a false affidavit relating to the ownership or operation of a motor vehicle (61-5-303);

(b) three convictions of reckless driving committed within a period of 12 months (61-8-301); or

(c) convictions of careless driving resulting in death or reckless driving resulting in death.

(3) Court abstracts or reports of conviction received by the department that name an individual licensed in another jurisdiction must be forwarded to the jurisdiction of licensure. The department may not take action against the driver's license or driving privilege of the individual as may be required elsewhere in this title."

Section 38. Section 61-8-101, MCA, is amended to read:

"**61-8-101. Application -- exceptions.** (1) As used in this chapter, "ways of this state open to the public" means any highway, road, alley, lane, parking area, or other public or private place adapted and fitted for public travel that is in common use by the public.

(2) The provisions of this chapter relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except:

(a) where a different place is specifically referred to in a given section;

(b) the provisions of 61-8-301 and ~~61-8-401(1)(b), (1)(c), and (2)~~ [section 2(1) and (2)], with regard to operating a vehicle while under the influence of drugs, apply anywhere within this state;

(c) the provisions of 61-8-301 and ~~61-8-401 except subsections (1)(b), (1)(c), and (2) thereof, 61-8-402 through 61-8-405, and 61-8-465~~ [section 2], except under the influence of a dangerous drug and [section 2(2)], with regard to operating a vehicle while under the influence of alcohol, apply upon all ways of this state open to the public.

(3) The operation of motor vehicles directly across the public roads and highways of this state, especially as required in the transportation of natural resource products, including agricultural products and livestock, shall not be considered to be the operation of such vehicles on the public roads and highways of this state or on ways of this state open to the public, provided that such crossings are adequately marked with warning signs or devices. Such crossings are subject to provisions relating to stopping before entry and to restoration of any damage as may reasonably be prescribed by the state or local agency in control of safety of operation of the public highway involved."

Section 39. Section 61-8-102, MCA, is amended to read:

"**61-8-102. Uniformity of interpretation -- definitions.** (1) Interpretation of this chapter in this state

must be as consistent as possible with the interpretation of similar laws in other states.

(2) As used in this chapter, unless the context requires otherwise, the following definitions apply:

(a) "Authorized emergency vehicle" means a vehicle of a governmental fire agency organized under Title 7, chapter 33, an ambulance, or an emergency vehicle designated or authorized by the department.

(b) "Bicycle" means a vehicle propelled solely by human power on which any person may ride, irrespective of the number of wheels, except scooters, wheelchairs, and similar devices. The term includes an electrically assisted bicycle.

(c) "Bicycle trailer" means a device with one or more wheels that is designed to be towed by a bicycle.

(d) "Business district" means the territory contiguous to and including a highway when within any 600 feet along a highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, office buildings, railroad stations, and public buildings that occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of the highway.

(e) "Controlled-access highway" means a highway, street, or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the highway, street, or roadway except at the points and in the manner as determined by the public authority having jurisdiction over the highway, street, or roadway.

(f) "Crosswalk" means:

(i) that part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway; or

(ii) any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrians crossing by lines or other markings on the surface.

(g) "Electrically assisted bicycle" means a vehicle on which a person may ride that has two tandem wheels and an electric motor capable of propelling the vehicle and a rider who weighs 170 pounds no faster than 20 miles an hour on a paved, level surface.

(h) "Flag person" means a person who directs, controls, or alters the normal flow of vehicular traffic on a street or highway as a result of a vehicular traffic hazard then present on that street or highway. This person, except a uniformed traffic enforcement officer exercising the officer's duty as a result of a planned vehicular

traffic hazard, must be equipped as required by the rules of the department of transportation.

(i) "Highway" has the meaning provided in 61-1-101, but includes ways that have been or are later dedicated to public use.

(j) "Ignition interlock device" means ignition equipment that:

(i) analyzes the breath to determine blood alcohol concentration;

(ii) is approved by the department pursuant to ~~61-8-441~~ [section 13]; and

(iii) is designed to prevent a motor vehicle from being operated by a person who has consumed a specific amount of an alcoholic beverage.

(k) (i) "Intersection" means the area embraced within the prolongation or connection of the lateral curb lines or if there are no curb lines then the lateral boundary lines of the roadways of two highways that join one another at or approximately at right angles or the area within which vehicles traveling on different highways joining at any other angle may come in conflict.

(ii) When a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of the divided highway by an intersecting highway must be regarded as a separate intersection. If the intersecting highways also include two roadways 30 feet or more apart, then every crossing of two roadways of the highways must be regarded as a separate intersection.

(l) "Laned roadway" means a roadway that is divided into two or more clearly marked lanes for vehicular traffic.

(m) "Local authorities" means every county, municipal, and other local board or body having authority to enact laws relating to traffic under the constitution and laws of this state.

(n) "Moped" means a vehicle equipped with two or three wheels, foot pedals to permit muscular propulsion, and an independent power source providing a maximum of 2 brake horsepower. The power source may not be capable of propelling the device, unassisted, at a speed exceeding 30 miles an hour on a level surface. The device must be equipped with a power drive system that functions directly or automatically only and does not require clutching or shifting by the operator after the drive system is engaged.

(o) "Noncommercial motor vehicle" or "noncommercial vehicle" means any motor vehicle or combination of motor vehicles that is not included in the definition of commercial motor vehicle in 61-1-101 and includes but is not limited to the vehicles listed in 61-1-101(10)(b).

(p) "Official traffic control devices" means all signs, signals, markings, and devices not inconsistent with this title that are placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic.

(q) "Pedestrian" means any person on foot or any person in a manually or mechanically propelled wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person.

(r) "Police vehicle" means a vehicle used in the service of any law enforcement agency.

(s) "Private road" or "driveway" means a way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

(t) "Residence district" means the territory contiguous to and including a highway not comprising a business district when the property on the highway for a distance of 300 feet or more is primarily improved with residences or residences and buildings in use for business.

(u) "Right-of-way" means the privilege of the immediate use of the roadway.

(v) "Roadway" means the portion of a highway that is improved, designed, or ordinarily used for vehicular travel, including the paved shoulder.

(w) "School bus" has the meaning provided in 20-10-101.

(x) "Sidewalk" means the portion of a street that is between the curb lines or the lateral lines of a roadway and the adjacent property lines and that is intended for use by pedestrians.

(y) "Traffic control signal" means a device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed.

(z) "Urban district" means the territory contiguous to and including any street that is built up with structures devoted to business, industry, or dwelling houses situated at intervals of less than 100 feet for a distance of one-fourth mile or more."

Section 40. Section 61-8-805, MCA, is amended to read:

"**61-8-805. Suspension for operating commercial vehicle with alcohol concentration of 0.04 or more -- hearing.** (1) A person whose alcohol concentration is 0.04 or more while the person drives or is in actual physical control of a commercial motor vehicle is subject to the suspension of the person's commercial

driver's license. The peace officer who determines that the person is operating a commercial motor vehicle with an alcohol concentration of 0.04 or more shall immediately seize the person's commercial driver's license and, on behalf of the department, give the person written notice of the license suspension and the right to a hearing under 61-8-808. Upon receipt of a report certified under penalty of law from the peace officer that the person was operating a commercial motor vehicle with an alcohol concentration of 0.04 or more, the department shall suspend the license, with no provision for a restricted probationary commercial license, for:

(a) 1 year, upon receipt of the first report of a 0.04 or more alcohol concentration violation, except that if the violation occurred in a commercial motor vehicle transporting placardable hazardous materials, the suspension must be for 3 years; and

(b) life, upon receipt of a second or subsequent 0.04 or more alcohol concentration violation report at any time as determined from the records of the department, subject to federal rules allowing for driver rehabilitation and license reinstatement, if otherwise eligible, upon service of a minimum period of 10 years' suspension.

(2) A peace officer who determines that a commercial motor vehicle operator has a measured amount or detected presence of alcohol in the operator's body while operating a commercial motor vehicle shall place the commercial motor vehicle operator out of service as mandated by federal regulations for 24 hours.

(3) The fact that a person charged with a violation of the provisions of subsection (1) is entitled to use alcohol under the laws of Montana is not a defense against a charge of violating the provisions of subsection (1).

(4) For purposes of this section, a conviction for violation of ~~61-8-401 or 61-8-406~~ [section 2(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)] while operating a commercial motor vehicle or a prior refusal to be tested under an implied consent law must be treated as a prior report of a 0.04 or more alcohol concentration violation and must be used in determining the length of the license suspension under subsection (1)."

Section 41. Section 61-8-807, MCA, is amended to read:

"**61-8-807. Administration of tests.** Tests required under this part must be administered as provided in ~~61-8-405~~ [section 11]."

Section 42. Section 61-11-101, MCA, is amended to read:

"**61-11-101. Report of convictions and suspension or revocation of driver's licenses -- surrender of licenses.** (1) If a person is convicted of an offense for which chapter 5 or chapter 8, part 8, makes mandatory the suspension or revocation of the driver's license or commercial driver's license of the person by the department, the court in which the conviction occurs shall require the surrender to it of all driver's licenses then held by the convicted person. The court shall, within 5 days after the conviction, forward the license and a record of the conviction to the department. If the person does not possess a driver's license, the court shall indicate that fact in its report to the department.

(2) A court having jurisdiction over offenses committed under a statute of this state or a municipal ordinance regulating the operation of motor vehicles on highways, except for standing or parking statutes or ordinances, shall forward a record of the conviction, as defined in 61-5-213, to the department within 5 days after the conviction. The court may recommend that the department issue a restricted probationary license on the condition that the individual comply with the requirement that the person attend and complete a chemical dependency education course, treatment, or both, as ordered by the court under ~~61-8-732~~ [section 5].

(3) A court or other agency of this state or of a subdivision of the state that has jurisdiction to take any action suspending, revoking, or otherwise limiting a license to drive shall report an action and the adjudication upon which it is based to the department within 5 days on forms furnished by the department.

(4) (a) On a conviction referred to in subsection (1) of a person who holds a commercial driver's license or who is required to hold a commercial driver's license, a court may not take any action, including deferring imposition of judgment, that would prevent a conviction for any violation of a state or local traffic control law or ordinance, except a parking law or ordinance, in any type of motor vehicle, from appearing on the person's driving record. The provisions of this subsection (4)(a) apply only to the conviction of a person who holds a commercial driver's license or who is required to hold a commercial driver's license and do not apply to the conviction of a person who holds any other type of driver's license.

(b) For purposes of this subsection (4), "who is required to hold a commercial driver's license" refers to a person who did not have a commercial driver's license but who was operating a commercial motor vehicle at the time of a violation of a state or local traffic control law or ordinance resulting in a conviction referred to in subsection (1).

(5) (a) If a person who holds a valid registry identification card or license issued pursuant to 50-46-307 or 50-46-308 is convicted of or pleads guilty to any offense related to driving under the influence of alcohol or drugs when the initial offense with which the person was charged was a violation of ~~61-8-401, 61-8-406, 61-8-410, or 61-8-411~~ [section 2], the court in which the conviction occurs shall require the person to surrender the registry identification card or license.

(b) Within 5 days after the conviction, the court shall forward the registry identification card and a copy of the conviction to the department of public health and human services."

Section 43. Section 67-1-211, MCA, is amended to read:

"**67-1-211. Alcohol concentration standards -- evidence admissible -- administration of tests.** (1) If a person acting or attempting to act as a crewmember of an aircraft has an alcohol concentration, as defined in [section 1] of 0.04% by weight or more ~~as defined in 61-8-407~~, it may be inferred that the person is under the influence of alcohol and is in violation of 67-1-204.

(2) Evidence of any measured amount or detected presence of alcohol in the person at the time of the act alleged under subsection (1) and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204.

(3) In any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204, the court or jury may consider federal regulations governing aeronautics.

(4) A person who operates an aircraft over the lands and waters of this state is considered to have given consent to a test of the person's blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol in the person's body if arrested by a peace officer for operating, attempting to operate, or being in actual physical control of an aircraft while under the influence of alcohol, drugs, or a combination of the two. The test must be administered at the direction of a peace officer who has reasonable grounds to believe the person was operating, attempting to operate, or in actual physical control of an aircraft while under the influence of alcohol, drugs, or a combination of the two. The arresting officer may designate which of the tests must be administered. A person who is unconscious or who is otherwise in a

condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by this subsection.

(5) If a person charged with a violation of 67-1-204 refuses to submit to a test of the person's blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol in the person's body, a test will not be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204.

(6) The provisions relating to administration of tests provided in ~~61-8-405~~ [section 11] and the definition of alcohol concentration provided in ~~61-8-407~~ [section 1] apply to any testing done to determine any measured amount or detected presence of alcohol in a person and the alcohol concentration of a person charged with violation of 67-1-204."

Section 44. Repealer. The following sections of the Montana Code Annotated are repealed:

61-8-401. Driving under influence of alcohol or drugs -- definitions.

61-8-402. Implied consent -- blood or breath tests for alcohol, drugs, or both -- refusal to submit to test -- administrative license suspension.

61-8-403. Right of appeal to court.

61-8-404. Evidence admissible -- conditions of admissibility.

61-8-405. Administration of tests.

61-8-406. Operation of noncommercial vehicle by person with alcohol concentration of 0.08 or more -- operation of commercial vehicle by person with alcohol concentration of 0.04 or more.

61-8-407. Definition of alcohol concentration.

61-8-408. Multiple convictions prohibited.

61-8-409. Preliminary alcohol screening test.

61-8-410. Operation of vehicle by person under 21 years of age with alcohol concentration of 0.02 or more.

61-8-411. Operation of noncommercial vehicle or commercial vehicle by person under influence of delta-9-tetrahydrocannabinol.

61-8-421. Forfeiture procedure.

61-8-422. Prohibition on transfer, sale, or encumbrance of vehicles subject to forfeiture -- penalty.

61-8-440. Ignition interlock device -- assisting in starting and operating -- circumventing -- penalty.

61-8-441. Department rules regarding ignition interlock devices -- ignition interlock device provider requirements.

61-8-442. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- ignition interlock device -- 24/7 sobriety and drug monitoring program -- forfeiture of vehicle.

61-8-460. Unlawful possession of open alcoholic beverage container in motor vehicle on highway.

61-8-461. Definitions.

61-8-465. Aggravated DUI.

61-8-714. Penalty for driving under influence of alcohol or drugs -- first through third offense.

61-8-722. Penalty for driving with excessive alcohol concentration or delta-9-tetrahydrocannabinol level -- first through third offense.

61-8-731. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- under influence of delta-9-tetrahydrocannabinol -- aggravated driving under the influence -- penalty for fourth or subsequent offense.

61-8-732. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- assessment, education, and treatment required.

61-8-733. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- ignition interlock device -- 24/7 sobriety and drug monitoring program -- forfeiture of vehicle.

61-8-734. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- conviction defined -- place of imprisonment -- home arrest -- exceptions -- deferral of sentence not allowed.

61-8-741. Suspension of imprisonment sentence for DUI court participation -- DUI court defined.

Section 44. Codification instruction. [Sections 1 through 17] are intended to be codified as an integral part of Title 61, chapter 8, and the provisions of Title 61, chapter 8, apply to [sections 1 through 17].

Section 46. Saving clause. [This act] does not affect rights and duties that matured, penalties that

were incurred, or proceedings that were begun before [the effective date of this act].

Section 45. Effective date. [This act] is effective January 1, 2022.

Section 46. Applicability. [This act] applies to DUI incidents taking place on or after [the effective date of this act].

- END -

I hereby certify that the within bill,

SB 365, originated in the Senate.

_____

Secretary of the Senate

_____

President of the Senate

Signed this _____day

of_____, 2021.

_____

Speaker of the House

Signed this _____day

of_____, 2021.

SENATE BILL NO. 365

INTRODUCED BY K. REGIER

AN ACT GENERALLY REVISING LAWS REGARDING DRIVING UNDER THE INFLUENCE; PROVIDING DEFINITIONS; PROVIDING FOR DRIVING UNDER THE INFLUENCE CRIMES, TREATMENT REQUIREMENTS, A SOBRIETY MONITORING PROGRAM, FORFEITURE PROVISIONS, IMPLIED CONSENT AND ADMINISTRATIVE LICENSE SUSPENSION, APPEAL PROCESS, CONDITIONS OF ADMISSIBILITY, A PROCESS FOR ADMINISTRATION OF TESTS, CONDITIONS FOR RECEIVING A PROBATIONARY DRIVER'S LICENSE, OPEN CONTAINER VIOLATIONS, AND REVOCATION AND SUSPENSION OF LICENSE PROCEDURES; PROVIDING RULEMAKING AUTHORITY; PROVIDING PENALTIES; AMENDING SECTIONS 23-2-535, 44-4-1205, 45-5-106, 45-5-205, 45-5-207, 45-5-628, 46-16-130, 46-18-201, 46-18-236, 50-46-320, 53-9-103, 61-1-101, 61-2-107, 61-2-302, 61-5-205, 61-5-208, 61-5-212, 61-5-218, 61-5-231, 61-5-405, 61-8-101, 61-8-102, 61-8-805, 61-8-807, 61-11-101, AND 67-1-211, MCA; REPEALING SECTIONS 61-8-401, 61-8-402, 61-8-403, 61-8-404, 61-8-405, 61-8-406, 61-8-407, 61-8-408, 61-8-409, 61-8-410, 61-8-411, 61-8-421, 61-8-422, 61-8-440, 61-8-441, 61-8-442, 61-8-460, 61-8-461, 61-8-465, 61-8-714, 61-8-722, 61-8-731, 61-8-732, 61-8-733, 61-8-734, AND 61-8-741, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Fiscal Note 2023 Biennium

Bill #	SB0365	Title:	Generally revise and reorganize driving under the influence laws
Primary Sponsor:	Regier, Keith	Status:	As Introduced

☐Significant Local Gov Impact ☐Needs to be included in HB 2 ☐Technical Concerns

☐Included in the Executive Budget ☐Significant Long-Term Impacts ☐Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2022 Difference	FY 2023 Difference	FY 2024 Difference	FY 2025 Difference
Expenditures:				
General Fund	$0	$0	$0	$0
Revenue:				
General Fund	$0	$0	$0	$0
Net Impact-General Fund Balance:	$0	$0	$0	$0

Description of fiscal impact: This bill has no fiscal impact to the state.

FISCAL ANALYSIS

Assumptions:

1. There will be approximately 40 hours of internal programming required within MERLIN but the Department of Justice will be able to be absorb the costs within current HB 2 appropriations.

Sponsor's Initials	*Date*	KA *Budget Director's Initials*	2/26/21 *Date*

MINUTES

MONTANA SENATE
67th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chair Keith Regier, on February 27, 2021 at 11:00 AM, in Room 303 Capitol

ROLL CALL

Members Present in the Committee Room:

Sen. Keith Regier, Chair (R)
Sen. Tom McGillvray, Vice Chair (R)
Sen. Bryce Bennett (D)
Sen. Bob Brown (R)
Sen. John Esp (R)
Sen. Chris Friedel (R)
Sen. Jen Gross (D)
Sen. Steve Hinebauch (R)
Sen. Theresa Manzella (R)

Members Present by Zoom Video Conference:

Sen. Diane Sands, Vice Chair (D)
Sen. Susan Webber (D)

Members Excused: None

Members Absent: None

Staff Present: Julianne Burkhardt, Legislative Branch
Taylor Tyson, Remote Meeting Coordinator
Jacelyn Sterling, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:	SB 361, 2/25/2021; SB 366, 2/25/2021; SB 344, 2/25/2021; SB 365, 2/25/2021; SB 370, 2/25/2021; SB 353, 2/25/2021
Executive Action:	SB 365 Do Pass; SB 353 Do Pass; SB 361 Do Pass, SB 344 Be Tabled, SB 366 Be Tabled; SB 370 Do Pass - will report out of committee when the fiscal note is received.

11:00:53 Chair Regier

HEARING ON SB 361

Opening Statement by Sponsor:

11:01:21 Sen. Brian Hoven (R), SD 13, opened the hearing on SB361, Generally revise laws to establish certificate of rehabilitation.

11:01:41 Sen. Webber joined the meeting.

Proponents' Testimony:

11:02:22 Patrick Webb, Americans for Prosperity Montana (AFP)

11:03:03 Sen. Sands joined the meeting.

11:06:56 Steve Cape, Montana Coalition of Safety and Justice (MTCSJ)
11:10:57 Bridger Mahlum, Montana Chamber of Commerce
11:13:06 SK Rossi, Montana Innocence Project (MTIP)
11:14:13 Sam Forstag, American Civil Liberties Union (ACLU)
11:14:52 Keaton Sunchild, Western Native Voice
11:15:22 Beth Brenneman, Disabilities Rights Montana
11:16:02 Kelsen Young, Montana Coalition Against Domestic and Sexual Violence (MCADSV)
11:16:53 SJ Howell, Montana Women Vote

Opponents' Testimony:

EXHIBIT(jus42a01)

Informational Testimony: None

Questions from Committee Members and Responses:

11:18:34 Chair Regier
11:19:26 Mr. Webb, AFP
11:19:56 Mr. Cape, MTCSJ
11:20:52 Chair Regier
11:20:58 Mr. Cape
11:21:04 Sen. Hinebauch
11:21:22 Mr. Webb
11:21:33 Sen. Sands
11:22:06 Sen. Hoven
11:22:30 Sen. Sands
11:23:46 Ms. Young, MCADSV
11:24:19 Sen. Sands
11:24:43 Chair Regier
11:24:51 Sen. Sands
11:25:04 Sen. Webber
11:25:11 Sen. Manzella
11:26:30 Mr. Cape
11:28:17 Sen. Webber
11:29:10 Mr. Cape

11:30:32 Sen. Brown
11:31:07 Mr. Cape
11:32:57 Sen. Brown
11:33:31 Mr. Cape
11:34:51 Sen. Webber
11:35:45 Mr. Forstag, ACLU
11:36:00 Ms. Rossi, MTIP
11:37:04 Sen. Friedel
11:37:48 Mr. Cape
11:39:28 Sen. Friedel
11:40:26 Mr. Cape
11:41:01 Sen. Friedel
11:41:22 Mr. Cape
11:42:38 Sen. McGillvray
11:42:55 Mr. Cape
11:43:34 Sen. McGillvray
11:43:59 Mr. Cape

Closing by Sponsor:
11:45:45 Sen. Hoven

HEARING ON SB 366

Opening Statement by Sponsor:
11:47:26 Sen. Carl Glimm (R), SD 2, opened the hearing on SB366, Revise judicial standards commission complaint process.

Proponents' Testimony:
11:51:39 Laurie Little Dog, Bozeman
11:53:13 Clemente Arciga, Missoula
EXHIBIT(jus42a02)

11:54:09 Josh Butterfly, Opening Doors, Great Falls
11:55:40 Marcos Bullchild, Great Falls

Opponents' Testimony:
11:56:10 Mike Menahan, district court judge, 1st Judicial District Court
12:07:08 Mike Swingley, justice of the peace, Lewis and Clark County
12:11:39 Bruce Spencer, State Bar of Montana
12:17:14 Randal Spaulding, district court judge, 14th Judicial District Court
EXHIBIT(jus42a03)

Informational Testimony: None

Questions from Committee Members and Responses:
12:20:31 Sen. Manzella
12:22:31 Mr. Spencer, State Bar
12:22:53 Sen. Manzella
12:23:28 Mr. Menahan, 1st Judicial District Court
12:23:38 Sen. Manzella

12:23:43 Mr. Menahan
12:23:57 Sen. McGillvray
12:24:16 Sen. Glimm
12:24:40 Sen. Brown
12:25:43 Sen. McGillvray
12:26:34 Sen. Glimm
12:26:47 Sen. McGillvray
12:26:53 Sen. Brown
12:30:28 Mr. Menahan
12:30:47 Chair Regier
12:31:58 Mr. Menahan
12:34:10 Sen. McGillvray
12:34:41 Mr. Menahan

Closing by Sponsor:
12:35:45 Sen. Glimm

HEARING ON SB 344

Opening Statement by Sponsor:
12:36:26 Sen. Kenneth Bogner (R), SD 19, opened the hearing on SB344, Allow for adult inmates at Pine Hills Youth Correctional Facility.

Proponents' Testimony:
12:39:33 Brian Gootkin, director, Department of Corrections (COR)

Opponents' Testimony:
12:40:02 Beth Brenneman, Disability Rights Montana
12:43:49 Sam Forstag, American Civil Liberties Union (ACLU)
12:45:25 Kelsen Young, Montana Coalition Against Domestic and Sexual Violence (MCADSV)
12:46:50 Josh Butterfly, Opening Doors, Great Falls
EXHIBIT(jus42a04)

12:48:58 SJ Howell, Montana Women Vote
12:49:53 Clemente Arciga, Missoula
EXHIBIT(jus42a05)

12:52:03 Laurie Little Dog, Bozeman
EXHIBIT(jus42a06)

Informational Testimony:
12:52:43 Kimberly Timm, Financial Services Bureau chief, COR
12:53:06 Steve Ray, superintendent, Pine Hills Youth Correctional Facility, COR
12:53:24 Cynthia Wolken, deputy director, COR
12:53:40 Colleen Ambrose, chief legal council, COR

Questions from Committee Members and Responses:
12:53:58 Sen. Hinebauch
12:54:22 Mr. Gootkin, COR

12:54:32 Chair Regier
12:54:56 Mr. Gootkin
12:55:11 Ms. Ambrose, COR
12:57:13 Sen. Sands
12:57:28 Ms. Wolken, COR
12:58:59 Sen. Sands
12:59:33 Ms. Wolken
13:00:29 Sen. Sands
13:00:34 Sen. Manzella
13:00:58 Mr. Gootkin
13:01:11 Ms. Wolken
13:02:26 Sen. Brown
13:04:31 Mr. Ray, COR
13:04:50 Chair Regier
13:05:01 Mr. Ray
13:05:33 Chair Regier

Closing by Sponsor:
13:05:43 Sen. Bogner

13:06:04 Vice Chair McGillvray assumed the duties of the chair.

HEARING ON SB 365

Opening Statement by Sponsor:
13:06:20 Sen. Keith Regier (R), SD 3, opened the hearing on SB365, Generally revise and reorganize driving under the influence laws.

Proponents' Testimony:
13:07:33 Cory Swanson, Montana County Attorneys' Association (MCAA)
13:14:45 Derek Oestreicher, general counsel, Attorney General's Office, Department of Justice (DOJ)
13:15:30 Brain Thompson, Montana Sheriffs and Peace Officers Association
13:16:09 Jesse Luther, Association of Montana Troopers
13:17:07 Shelby DeMars, Montana Police Protective Association
13:17:58 Laurie Little Dog, Bozeman

Opponents' Testimony:
13:18:18 Sam Forstag, American Civil Liberties Union

Informational Testimony: None

Questions from Committee Members and Responses:
13:19:22 Sen. Friedel
13:20:56 Mr. Oestreicher, DOJ
13:21:19 Sen. Friedel
13:21:55 Mr. Oestreicher
13:22:16 Sen. Esp
13:22:29 Chair Regier
13:22:41 Sen. Manzella

13:23:01 Mr. Swanson, MCAA

Closing by Sponsor:
13:24:37 Sen. Regier

13:24:58 Sen. Regier resumed the duties of the chair.

HEARING ON SB 370

Opening Statement by Sponsor:
13:25:41 Sen. Jason Ellsworth (R), SD 43, opened the hearing on SB370, Protecting constitutional rights during an emergency.

Proponents' Testimony:
13:30:55 Cathy Carlson, Helena

Additional Testimony Received:
EXHIBIT(jus42a07)

Opponents' Testimony:
EXHIBIT(jus42a08)

Informational Testimony: None

Questions from Committee Members and Responses:
13:32:59 Sen. Esp
13:33:52 Sen. Ellsworth
13:35:43 Sen. McGillvray
13:36:34 Sen. Ellsworth
13:37:04 Sen. McGillvray
13:38:07 Sen. Ellsworth
13:39:07 Sen. Esp
13:39:27 Sen. Ellsworth
13:39:46 Sen. Esp
13:39:51 Sen. Regier
13:39:59 Sen. Ellsworth

Closing by Sponsor:
13:40:12 Sen. Ellsworth

HEARING ON SB 353

Opening Statement by Sponsor:
13:41:40 Sen. Jen Gross (D), SD 25, opened the hearing on SB353, Require probation/parole officers to inform re: restoration of rights.

Proponents' Testimony:
13:52:05 Patrick Webb, Americans for Prosperity Montana
13:52:37 Sam Forstag, American Civil Liberties Union
13:53:46 Jim Lochrie, citizen

13:59:38 Sen. Regier
13:59:51 Mr. Lochrie

Opponents' Testimony: None

Informational Testimony:
14:01:38 Brian Gootkin, director, Department of Corrections (COR)

Questions from Committee Members and Responses:
14:02:02 Sen. Friedel
14:02:57 Mr. Gootkin, COR
14:03:08 Sen. Sands
14:03:27 Mr. Gootkin
14:03:37 Chair Regier

Closing by Sponsor:
14:03:53 Sen. Gross

Committee Business:
14:05:43 Chair Regier
14:05:51 Sen. Sands

14:05:57 Recess
14:16:04 Reconvene

EXECUTIVE ACTION ON SB 361

14:16:23 **Motion:** Sen. McGillvray moved that **SB 361 DO PASS**.

Discussion:
14:16:32 Sen. Friedel

14:16:59 **Vote:** Motion carried unanimously by roll call vote.

EXECUTIVE ACTION ON SB 366

14:17:36 **Motion/Vote:** Sen. McGillvray moved that **SB 366 BE TABLED**. Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 344

14:18:16 **Motion:** Sen. McGillvray moved that **SB 344 DO PASS**.

Discussion:
14:18:24 Sen. Sands
14:19:08 Sen. Esp
14:19:28 Sen. Webber
14:20:58 Chair Regier

14:21:25 **Vote:** Motion failed 5-6 by roll call vote with Sen. Esp, Sen. Hinebauch, Sen. McGillvray, Sen. K. Regier and Sen. Sands voting aye.

14:21:58 **Motion/Vote:** Sen. McGillvray moved that **SB 344 BE TABLED**. Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 365

14:22:26 **Motion:** Sen. McGillvray moved that **SB 365 DO PASS**.

Discussion:
14:22:37 Sen. Friedel
14:22:52 Sen. Webber

14:23:16 **Vote:** Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 370

14:23:42 **Motion:** Sen. McGillvray moved that **SB 370 DO PASS**.

Discussion:
14:23:50 Sen. Esp

14:24:15 **Vote:** Motion carried 7-4 by roll call vote with Sen. Bennett, Sen. Gross, Sen. Sands and Sen. Webber voting no. (bill not reported out of committee pending receipt of the fiscal note)

EXECUTIVE ACTION ON SB 353

14:25:18 **Motion:** Sen. Gross moved that **SB 353 DO PASS**.

Discussion:
14:25:29 Sen. Webber
14:26:45 Sen. Manzella
14:27:01 Sen. McGillvray
14:27:37 Sen. Hinebauch

14:28:07 **Vote:** Motion carried 8-3 by roll call vote with Sen. Esp, Sen. Hinebauch and Sen. K. Regier voting no.

14:28:43 Chair Regier

ADJOURNMENT

Adjournment: 2:29 PM

_____
Jacelyn Sterling, Secretary

js

Additional Documents:

EXHIBIT(jus42aad.pdf)

Montana State Legislature

2021 Session

Additional Documents

May include the following:

- **Business Report**
- **Roll Call -Attendance**
- **Standing Committee Reports**
- **Tabled Bills**
- **Fiscal Reports**
- **Roll Call Votes**
- **Informational Item's**
- **Witness Statements**
- **Visitor Register**
- **Any other type of documents such as:**

  Petitions, Pamphlets, Leaflets, Brochures, Emails, all documents given to Committee Secretary 24 hours after the meeting adjourned.

The original exhibit/items are on file at the Montana Historical Society and may be viewed there.

Montana Historical Society Archives, 225 N. Roberts, Helena, MT 59620-1201
Phone (406) 444-4774.
E-Document Specialist Susie Hamilton

BUSINESS REPORT

MONTANA SENATE
67th LEGISLATURE - REGULAR SESSION

SENATE JUDICIARY COMMITTEE

Date: Saturday, February 27, 2021 **Time:** 11:00 A.M.
Place: Capitol **Room:** 303

BILLS and RESOLUTIONS HEARD:

SB 344 - Allow for adult inmates at Pine Hills Youth Correctional Facility - Sen. Kenneth Bogner (R)
SB 353 - Require probation /parole officers to inform re: restoration of rights - Sen. Jen Gross (D)
SB 361 - Generally revise laws to establish certificate of rehabilitation - Sen. Brian Hoven (R)
SB 365 - Generally revise and reorganize driving under the influence laws - Sen. Keith Regier (R)
SB 366 - Revise judicial standards commission complaint process - Sen. Carl Glimm (R)
SB 370 - Protecting constitutional rights during an emergency - Sen. Jason Ellsworth (R)

EXECUTIVE ACTION TAKEN:

SB 365 Do Pass
SB 353 Do Pass
SB 361 Do Pass
SB 344 Be Tabled
SB 366 Be Tabled
SB 370 was voted on. It will report out of committee when the fiscal note is received.

Comments:

Keith Regier
SEN. Keith Regier, Chair

MONTANA STATE SENATE
Roll Call
JUDICIARY COMMITTEE

DATE: 7.27.2021

NAME	PRESENT	ABSENT/ EXCUSED
VICE CHAIR MCGILLVRAY	✓	
VICE CHAIR SANDS		✓
SEN. ESP	✓	
SEN. HINEBAUCH	✓	
SEN. BENNETT	✓	
SEN. MANZELLA	✓	
SEN. WEBBER		✓
SEN. BROWN	✓	
SEN. FRIEDEL	✓	
SEN. GROSS	✓	
CHAIRMAN REGIER	✓	
11 Committee Members		

SENATE STANDING COMMITTEE REPORT

February 27, 2021

Mr. President:

We, your committee on **Judiciary** report that **Senate Bill 361** (first reading copy -- white) **do pass**.

Signed: _____
Senator Keith Regier, Chair

- END -

Committee Vote:
Yes 11, No 0
Fiscal Note Required _X_

SB0361001SC.slk

SENATE STANDING COMMITTEE REPORT

February 27, 2021

Mr. President:

We, your committee on **Judiciary** report that **Senate Bill 365** (first reading copy -- white) **do pass**.

Signed: _____
Senator Keith Regier, Chair

- END -

Committee Vote:
Yes 11, No 0
Fiscal Note Required _X_

SB0365001SC.slk

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** report that **Senate Bill 353** (first reading copy -- white) **do pass**.

Signed: _____
Senator Keith Regier, Chair

- END -

Committee Vote:
Yes 8, No 3
Fiscal Note Required _X_

SB0353001SC.slk

COMMITTEE FILE COPY

BILL TABLED NOTICE

SENATE JUDICIARY COMMITTEE

The **SENATE JUDICIARY COMMITTEE** TABLED

SB 344 - Allow for adult inmates at Pine Hills Youth Correctional Facility - Sen. Kenneth Bogner (R)
SB 366 - Revise judicial standards commission complaint process - Sen. Carl Glimm (R)

by motion, on **Saturday, February 27, 2021** (PLEASE USE THIS ACTION DATE IN LAWS BILL STATUS).

Jacelyn Sterling
(For the Committee)

(For the Secretary of the Senate)

2:45p / 2/27
(Time) (Date)

February 27, 2021 (2:37pm) Jacelyn Sterling, Secretary Phone: 444-4751

MONTANA STATE SENATE
Roll Call Vote
JUDICIARY COMMITTEE

DATE 2.26.7.2021 BILL NO SB361 MOTION NO.
MOTION: Do Pass

NAME	AYE	NO	Proxy
VICE CHAIR MCGILLVRAY	✓		
VICE CHAIR SANDS	✓		
SEN. ESP	✓		
SEN. HINEBAUCH	✓		
SEN. BENNETT	✓		
SEN. MANZELLA	✓		
SEN. WEBBER	✓		
SEN. BROWN	✓		
SEN. FRIEDEL	✓		
SEN. GROSS	✓		
CHAIRMAN REGIER	✓		
11 COMMITTEE MEMBERS			

MONTANA STATE SENATE
Roll Call Vote
JUDICIARY COMMITTEE

DATE 2.27.2021 BILL NO SB344 MOTION NO. _____
MOTION: Do Pass

NAME	AYE	NO	Proxy
VICE CHAIR MCGILLVRAY	✓		
VICE CHAIR SANDS	✓		
SEN. ESP	✓		
SEN. HINEBAUCH	✓		
SEN. BENNETT		✓	
SEN. MANZELLA		✓	
SEN. WEBBER		✓	
SEN. BROWN		✓	
SEN. FRIEDEL		✓	
SEN. GROSS		✓	
CHAIRMAN REGIER	✓		
11 COMMITTEE MEMBERS			

MONTANA STATE SENATE
Roll Call Vote
JUDICIARY COMMITTEE

DATE 2.27.2021 BILL NO SB 370 MOTION NO. _____
MOTION: Do Pass

NAME	AYE	NO	Proxy
VICE CHAIR MCGILLVRAY	✓		
VICE CHAIR SANDS		✓	
SEN. ESP	✓		
SEN. HINEBAUCH	✓		
SEN. BENNETT		✓	
SEN. MANZELLA	✓		
SEN. WEBBER		✓	
SEN. BROWN	✓		
SEN. FRIEDEL	✓		
SEN. GROSS		✓	
CHAIRMAN REGIER	✓		
11 COMMITTEE MEMBERS			

MONTANA STATE SENATE
Roll Call Vote
JUDICIARY COMMITTEE

DATE 2.27.2021 BILL NO SB 353 MOTION NO. _____
MOTION: Do Pass

NAME	AYE	NO	Proxy
VICE CHAIR MCGILLVRAY	✓		
VICE CHAIR SANDS	✓		
SEN. ESP		✓	
SEN. HINEBAUCH		✓	
SEN. BENNETT	✓		
SEN. MANZELLA	✓		
SEN. WEBBER	✓		
SEN. BROWN	✓		
SEN. FRIEDEL	✓		
SEN. GROSS	✓		
CHAIRMAN REGIER		✓	
11 COMMITTEE MEMBERS			

#1

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Saturday, February 27, 2021
SB 361 - Generally revise laws to establish certificate of rehabilitation
Sponsor: **Sen. Brian Hoven (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
SK Rossi	Innocence Project	X		
STEVE CAPE	Coal. For Safety & Justice	X		
Patrick Webb	AFP-MT	X		
Bridger Mahlum	MT Chamber Commerce	X		
Sam Forstag	ACLU of MT	✓		
Keaton Sunchild	Western Native Voice	F		
Bett Brennan	Disability Rights MT	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

#2

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Saturday, February 27, 2021
SB 366 - Revise judicial standards commission complaint process
Sponsor: **Sen. Carl Glimm (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Mike Swingley	Mt. Magistrates		✓	
Mark Piskolich	MT Magistrates		✓	
Mike Menahan	Judicial Standards Comm.		✓	
Bruce Spaa	Self - MT		✓	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

#3

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Saturday, February 27, 2021
SB 344 - Allow for adult inmates at Pine Hills Youth Correctional Facility
Sponsor: **Sen. Kenneth Bogner (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Brian Gootkin	DOC	✓		
Sam Forstag	ACLU of MT		✓	
Beth Brenner	Disability Rights MT		X	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

#4

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Saturday, February 27, 2021
SB 365 - Generally revise and reorganize driving under the influence laws
Sponsor: **Sen. Keith Regier (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Shelby DeMars	MT Police Protective Assoc.	X		
Brian Thomerson	MT Sheriffs & Peace Officers Assn.	X		
Cory Swanson	MT. Co. Attorney Assn.	X		
Jessie Luther	Assn of MT troopers	X		
Keaton Sunchild	WNV		✓	
Sam Forstag	ACLU of MT		✓	
Derek Oestreicher	AG	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

#5

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Saturday, February 27, 2021
SB 370 - Protecting constitutional rights during an emergency
Sponsor: **Sen. Jason Ellsworth (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Carley Carlson	me	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

#6

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Saturday, February 27, 2021
SB 353 - Require probation /parole officers to inform re: restoration of rights
Sponsor: **Sen. Jen Gross (D)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Brian Gootkin	DOC			✓
Patrick Webb	AFP-MT	+		
Sam Forstag	ACLU of MT	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

Senate Judiciary Zoom Testimony Request Meeting: 02/27/2021 @ 8:00 AM

Bill	Name	Position	Location	Email	Affiliation
SB 344	Kelsen Young	Opponent	Helena	kyoung@mcadsv.com	MCADSV
	Josh Butterfly	Opponent	Great Falls	butterflyjosh4@gmail.com	Opening Doors
	SJ Howell	Opponent	Missoula	howell@montanawomenvote.org	Montana Women Vote
	Clemente Arciga	Opponent	Missoula	clementearciga@aol.com	NA
	Laurie Little Dog	Opponent	Bozeman	Letthemcomehome@gmail.com	#LetThemComeHome and Self
	Kimberly Timm	Informational Witness	Helena	ktimm@mt.gov	DOC
	Steve Ray	Informational Witness	Helena	sray2@mt.gov	DOC
	Cynthia Wolken	Informational Witness	Helena	cynthia.wolken@mt.gov	DOC
	Colleen Ambrose	Informational Witness	Helena	cambrose@mt.gov	DOC
SB 353	Jim Lochrie	Proponent	Butte	jpl22254@gmail.com	NA
	Laurie Little Dog	Proponent	Bozeman	Letthemcomehome@gmail.com	#LetThemComeHome and Self
	Clemente Arciga	Proponent	Missoula	clementearciga@aol.com	NA
	Marcos Bullchild	Proponent	Great Falls	bullchildmarcos333@gmail.com	Opening Doors
	Josh Butterfly	Opponent	Great Falls	butterflyjosh4@gmail com	Opening Doors
SB 361	Kelsen Young	Proponent	Helena	kyoung@mcadsv com	MCADSV
	SJ Howell	Proponent	Missoula	howell@montanawomenvote.org	Montana Women Vote
	Kallee Grovom	Opponent	East Helena	Kalleejojo@gmail.com	NA
	Sharon Lodge	Opponent	Bozeman	pomsmt@yahoo.com	NA
SB 365	Laurie Little Dog	Proponent	Bozeman	Letthemcomehome@gmail.com	#LetThemComeHome and Self
SB 366	Laurie Little Dog	Proponent	Bozeman	Letthemcomehome@gmail.com	#LetThemComeHome and Self
	Clemente Arciga	Proponent	Missoula	clementearciga@aol.com	NA
	Josh Butterfly	Proponent	Great Falls	butterflyjosh4@gmail.com	Opening Doors
	Marcos Bullchild	Proponent	Great Falls	bullchildmarcos333@gmail.com	Opening Doors
	Randal Spaulding	Opponent	Roundup	rspaulding@mt.gov	NA
SB 370	Tim Burton	Opponent	Helena	tim.burton@mtleague.net	MT League of Cities and Towns

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
67th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chair Amy Regier, on March 19, 2021 at 8:00 AM, in Room 137 Capitol

ROLL CALL

Members Present:

Rep. Kathy Kelker, Vice Chair (D)
Rep. Amy Regier, Vice Chair (R)
Rep. Seth Berglee (R)
Rep. Laurie Bishop (D)
Rep. Jennifer Carlson (R)
Rep. Robert Farris-Olsen (D)
Rep. Frank Fleming (R)
Rep. Tom France (D)
Rep. Donavon Hawk (D)
Rep. Jedediah Hinkle (R)
Rep. Dennis R. Lenz (R)
Rep. Bob Phalen (R)
Rep. Derek Skees (R)
Rep. Ed Stafman (D)

Members Excused:

Rep. Barry Usher, Chair (R)
Rep. Jane Gillette (R)
Rep. Brandon Ler (R)
Rep. Mallerie Stromswold (R)
Rep. Danny Tenenbaum (D)

Members Absent: None

Staff Present:

Lydia Balian, Committee Secretary
Rachel Weiss, Legislative Branch
Hallie Swain, Remote Meeting Coordinator

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: SB 365, 3/16/2021; SB 354, 3/16/2021; SJ 8, 3/16/2021
Executive Action on: SJ 8, SB 215, SB 261, SB 278

HEARING ON SJ 8

Opening Statement by Sponsor:
08:01:50 Sen. Keith Regier (R), SD 3, opened the hearing on SJ 8, Resolution supporting "Keep Nine Amendment" to US Constitution.

08:02:19 Rep. Skees left the meeting.

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:
08:04:34 Vice Chair Kelker
08:05:36 Sen. Regier

Closing by Sponsor:
08:06:01 Sen. Regier

HEARING ON SB 365

Opening Statement by Sponsor:
08:06:29 Sen. Keith Regier (R), SD 3, opened the hearing on SB 365, Generally revise and reorganize driving under the influence laws.

Proponents' Testimony:
08:08:11 Angela Wetzsteon, Montana County Attorney's Association (MCAA)
08:10:37 Derek Oestreicher, Attorney General's Office (AG)
08:11:10 Nanette Gilbertson, Montana County Attorneys Association (MCAA); Montana Sheriffs and Peace Officers Association (MSPOA)
08:13:47 Jessie Luther, Association of Montana Troopers (AMT)

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:
08:15:30 Vice Chair Kelker
08:16:33 Sen. Regier
08:16:54 Rep. Stafman
08:17:20 Sen. Regier
08:18:56 Nanette Gilbertson, MCAA; MSPOA

Closing by Sponsor:
08:20:17 Sen. Regier

HEARING ON SB 354

Opening Statement by Sponsor:
08:21:00 Sen. Steve Hinebauch (R), SD 18, opened the hearing on SB 354, Revise laws related to land servitudes and easements.

Proponents' Testimony:
08:25:29 Jessie Luther, Taylor Luther Group
08:26:27 Rep. Bishop

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:
08:26:56 Vice Chair Kelker
08:29:29 Sen. Hinebauch
08:29:58 Rep. Carlson
08:31:21 Rep. Lenz
08:32:18 Jessie Luther, Taylor Luther Group
08:32:55 Rep. France
08:34:10 Sen. Hinebauch

Closing by Sponsor:
08:36:09 Sen. Hinebauch

08:36:54 Recess
09:12:16 Reconvened with Rep. Usher present

EXECUTIVE ACTION ON SJ 8

09:12:31 **Motion:** Rep. A. Regier moved that **SJ 8 BE CONCURRED IN**.

Discussion:
09:13:12 Rep. Hawk

09:13:36 **Vote:** Motion carried 13-6 by roll call vote with Rep. Bishop, Rep. Farris-Olsen, Rep. France, Rep. Kelker, Rep. Stafman and Rep. Tenenbaum voting no. Rep. Gillette and Rep. Stromswold voted by proxy. Rep. Phalen will carry the bill.

09:13:40 Rep. Gillette joined the meeting.

EXECUTIVE ACTION ON SB 215

09:15:04 Rachel Weiss, Legislative Services Division (LSD)

09:15:20 **Motion:** Rep. A. Regier moved that **SB 215 BE CONCURRED IN**.

Discussion:
09:15:26 Rep. Bishop

09:16:11 **Vote:** Motion carried 12-7 by roll call vote with Rep. Bishop, Rep. Farris-Olsen, Rep. France, Rep. Hawk, Rep. Kelker, Rep. Stafman and Rep. Tenenbaum voting no. Rep. Stromswold voted by proxy. Rep. Berglee will carry the bill.

EXECUTIVE ACTION ON SB 261

09:17:20 Rachel Weiss, LSD

09:17:36 **Motion:** Rep. A. Regier moved that **SB 261 BE CONCURRED IN**.

Discussion:
09:17:45 Rep. Farris-Olsen

09:18:28 **Vote:** Motion carried 12-7 by roll call vote with Rep. Bishop, Rep. Farris-Olsen, Rep. France, Rep. Hawk, Rep. Kelker, Rep. Stafman and Rep. Tenenbaum voting no. Rep. Stromswold voted by proxy. Rep. Stromswold will carry the bill.

EXECUTIVE ACTION ON SB 278

09:20:20 Rachel Weiss, LSD

09:20:29 **Motion/Vote:** Rep. A. Regier moved that **SB 278 BE CONCURRED IN**. Motion carried 12-7 by roll call vote with Rep. Bishop, Rep. Farris-Olsen, Rep. France, Rep. Hawk, Rep. Kelker, Rep. Stafman and Rep. Tenenbaum voting no. Rep. Stromswold voted by proxy. Rep. Berglee will carry the bill.

EXECUTIVE ACTION ON SB 365

09:22:23 **Motion:** Rep. A. Regier moved that **SB 365 BE CONCURRED IN**.

Discussion:
09:22:34 Vice Chair Kelker

09:22:55 Without objection, Rep. A. Regier withdrew the BE CONCURRED IN motion.

09:23:11 Rep. J. Hinkle

ADJOURNMENT

Adjournment: 09:24:52

_____
Lydia Balian, Secretary

lb

Additional Documents:

EXHIBIT(juh55aad.pdf)

Montana State Legislature

2021 Session

Additional Documents

May include the following:

- **Business Report**
- **Roll Call -Attendance**
- **Standing Committee Reports**
- **Tabled Bills**
- **Fiscal Reports**
- **Roll Call Votes**
- **Informational Item's**
- **Witness Statements**
- **Visitor Register**
- **Any other type of documents such as:**

  Petitions, Pamphlets, Leaflets, Brochures, Emails, all documents given to Committee Secretary 24 hours after the meeting adjourned.

The original exhibit/items are on file at the Montana Historical Society and may be viewed there.

Montana Historical Society Archives, 225 N. Roberts, Helena, MT 59620-1201
Phone (406) 444-4774.
E-Document Specialist Susie Hamilton

BUSINESS REPORT

MONTANA HOUSE OF REPRESENTATIVES
67th LEGISLATURE - REGULAR SESSION

HOUSE JUDICIARY COMMITTEE

Date: Friday, March 19, 2021 **Time:** 8:00 AM
Place: Capitol **Room:** 137

BILLS and RESOLUTIONS HEARD:

SB 354 - Revise laws related to land servitudes and easements - Sen. Steve Hinebauch (R)
SB 365 - Generally revise and reorganize driving under the influence laws - Sen. Keith Regier (R)
SJ 8 - Resolution supporting "Keep Nine Amendment" to US Constitution - Sen. Keith Regier (R)

EXECUTIVE ACTION TAKEN:

SJ 8 - Be Concurred In
SB 215 - Be Concurred In
SB 261 - Be Concurred In
SB 278 - Be Concurred In

Comments:

REP. Barry Usher, Chair

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE: 3/19/21

NAME	PRESENT	ABSENT/EXCUSED
REP. USHER, CHAIR		✓
REP. AMY REGIER, VICE CHAIR	✓	
REP. KELKER, VICE CHAIR	✓	
REP. BERGLEE	✓	
REP. BISHOP	✓	
REP. CARLSON	✓	
REP. FARRIS-OLSEN	✓	
REP. FLEMING	✓	
REP. FRANCE	✓	
REP. GILLETTE		✓
REP. HAWK	✓	
REP. JEDEDIAH HINKLE	✓	
REP. LENZ	✓	
REP. LER		✓
REP. PHALEN	✓	
REP. SKEES	✓	
REP. STAFMAN	✓	
REP. STROMSWOLD		✓
REP. TENENBAUM		✓

19 MEMBERS

HOUSE STANDING COMMITTEE REPORT

March 19, 2021

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 215** (second house second reading copy -- tan) **be concurred in**.

Signed: _____
Representative Barry Usher, Chair

To be carried by Representative Seth Berglee

- END -

Committee Vote:
Yes 12, No 7
Fiscal Note Required __

SB0215001SC16493.hlc

3.19.21 12:13 PM (F)

HOUSE STANDING COMMITTEE REPORT

March 19, 2021

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 261** (second house second reading copy -- tan) **be concurred in**.

Signed: _____
Representative Barry Usher, Chair

To be carried by Representative Mallerie Stromswold

- END -

Committee Vote:
Yes 12, No 7
Fiscal Note Required __

SB0261001SC19678.hlc

3.19.21 R 12:14P

HOUSE STANDING COMMITTEE REPORT

March 19, 2021

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 278** (second house second reading copy -- tan) **be concurred in**.

Signed: _____
Representative Barry Usher, Chair

To be carried by Representative Seth Berglee

- END -

Committee Vote:
Yes 12, No 7
Fiscal Note Required __

SB0278001SC16493.hlc

3.19.21
TR 2:14

HOUSE STANDING COMMITTEE REPORT

March 19, 2021

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Joint Resolution 8** (second house second reading copy -- tan) **be concurred in.**

Signed: _____
Representative Barry Usher, Chair

To be carried by Representative Bob Phalen

- END -

Committee Vote:
Yes 13, No 6
Fiscal Note Required __

SJ0008001SC19619.hlc

3.19.21 TA 12:15pm

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER SJ 8 DATE 3/19/21

MOTION Be Concurred In

NAME	AYE	NO	PROXY
REP. AMY REGIER, VICE CHAIR	✓		
REP. KELKER, VICE CHAIR		✓	
REP. CARLSON	✓		
REP. STROMSWOLD	✓		✓
REP. BERGLEE	✓		
REP. PHALEN	✓		
REP. FLEMING	✓		
REP. STAFMAN		✓	
REP. LENZ	✓		
REP. GILLETTE	✓		✓
REP. LER	✓		
REP. TENENBAUM		✓	
REP. BISHOP		✓	
REP. J. HINKLE	✓		
REP. HAWK	✓		
REP. SKEES	✓		
REP. FARRIS-OLSEN		✓	
REP. FRANCE		✓	
REP. USHER, CHAIR	✓		

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER SB 215 DATE 3/19/21

MOTION Be Concurred In

NAME	AYE	NO	PROXY
REP. AMY REGIER, VICE CHAIR	✓		
REP. KELKER, VICE CHAIR		✓	
REP. CARLSON	✓		
REP. STROMSWOLD	✓		✓
REP. BERGLEE	✓		
REP. PHALEN	✓		
REP. FLEMING	✓		
REP. STAFMAN		✓	
REP. LENZ	✓		
REP. GILLETTE	✓		
REP. LER	✓		
REP. TENENBAUM		✓	
REP. BISHOP		✓	
REP. J. HINKLE	✓		
REP. HAWK		✓	
REP. SKEES	✓		
REP. FARRIS-OLSEN		✓	
REP. FRANCE		✓	
REP. USHER, CHAIR	✓		

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER SB 261 DATE 3/19/21

MOTION Be Concurred In

NAME	AYE	NO	PROXY
REP. AMY REGIER, VICE CHAIR	✓		
REP. KELKER, VICE CHAIR		✓	
REP. CARLSON	✓		
REP. STROMSWOLD	✓		✓
REP. BERGLEE	✓		
REP. PHALEN	✓		
REP. FLEMING	✓		
REP. STAFMAN		✓	
REP. LENZ	✓		
REP. GILLETTE	✓		
REP. LER	✓		
REP. TENENBAUM		✓	
REP. BISHOP		✓	
REP. J. HINKLE	✓		
REP. HAWK		✓	
REP. SKEES	✓		
REP. FARRIS-OLSEN		✓	
REP. FRANCE		✓	
REP. USHER, CHAIR	✓		

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER SB 278 DATE 3/19/21

MOTION Be Concurred In

NAME	AYE	NO	PROXY
REP. AMY REGIER, VICE CHAIR	✓		
REP. KELKER, VICE CHAIR		✓	
REP. CARLSON	✓		
REP. STROMSWOLD	✓		✓
REP. BERGLEE	✓		
REP. PHALEN	✓		
REP. FLEMING	✓		
REP. STAFMAN		✓	
REP. LENZ	✓		
REP. GILLETTE	✓		
REP. LER	✓		
REP. TENENBAUM		✓	
REP. BISHOP		✓	
REP. J. HINKLE	✓		
REP. HAWK		✓	
REP. SKEES	✓		
REP. FARRIS-OLSEN		✓	
REP. FRANCE		✓	
REP. USHER, CHAIR	✓		

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED
COMMITTEE PROXY
67TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. Amy Regier.

BILL	AYE	NO
SJB Do Concur	✓	
SB215 Do Concur	✓	
SB261 Do Concur	✓	
SB279 Do Concur	✓	

BILL	AYE	NO

I authorize my vote to be matched with that of Rep. A. Regier for any amendments proposed on this date.

Rep. Mellene Stromswold (Signature) Date 3/17/21

Rep. Stromswold

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 67TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. A. Regier.

PLEASE USE PEN

BILL	MOTION (Include AMENDMENT #)	AYE	NO
SJ9	Do Concur	✓	

BILL	MOTION (Include AMENDMENT #)	AYE	NO

I authorize my vote to be matched with that of Rep. A. Regier for any amendments proposed on this date.

Rep. _____ Jane Gillette 3/19/21
(Signature) (Print Name) (Meeting Date)

Rep. Gillette

EXHIBIT 1
DATE 3/19/21
SB 365

SB 365 – DUI Code Revision Bill

The Montana County Attorneys Association has created SB 365 as a DUI Code revision, focusing on simplifying and reorganizing the current Montana DUI Code. The draft shrinks the current DUI code down from 27 main elemental, penalty, and procedural sections to 17, and compiles DUI law in one Part within Title 61, making the law easier to understand and navigate.

Under this bill, the DUI laws in Montana will have the identical application. SB 365 makes NO substantive changes.

Section Number, Description, and Pages	**Content**
Section 1 Definitions p. 1, 2, 3	I. All DUI-related definitions from current code moved to this section. II. Aggravated DUI has been reorganized as definitional and sentencing provisions for Driving Under the Influence. Created from 61-8-401, -407, -461, -465, -461(7), and *State v. Pinder*, 2015 MT 157.
Section 2 DUI Elements of the Offense p. 3, 4	I. All varieties of Driving Under the Influence (DUI, Per Se, etc.) are incorporated into one section. Created from 61-8-401, -406, -408, -410, and -411
Section 3 DUI Penalties 1st - 3rd Offense p. 4, 5, 6, 7, 8	I. All penalties for Driving Under the Influence first through 3rd offense (DUI, Per Se, etc.) are incorporated into one section. Created from 61-8-410, -465, -714, and -722
Section 4 DUI Penalties, 4th & subsequent Offense p. 8, 9, 10, 11	I. All penalties for fourth and subsequent offenses of Driving Under the Influence (DUI, Per Se, etc.) are incorporated into one section. Created from 61-8-731

Section 5 Assessment, Education, and Treatment p. 11, 12, 13	Created from 61-8-732
Section 6 24/7, Monitoring, Ignition Interlock p. 13, 14	Created from 61-8-442, and -733
Section 7 Convictions p. 14, 15	Created from 61-8-734
Section 8 Implied Consent p. 16, 17, 18	Created by merging duplicative language from 61-8-402, -405, and -409.
Section 9 Implied Consent Suspension Appeal p. 18, 19	Created from 61-8-403
Section 10 Evidence Admissible p. 19, 20	Created from 61-8-404
Section 11 Administration of Tests p. 20, 21	Created from 61-8-405

Section 12 Ignition Interlock p. 21	Created from 61-8-440
Section 13 Interlock Provider Requirements p. 21, 22	Created from 61-8-441
Section 14 Open Container p. 22, 23	Created from 61-8-460
Section 15 Suspension of Imprisonment for DUI Court Participation p. 23	Created from 61-8-741
Section 16 License Suspensions for Implied Consent Violations p. 23, 24, 25	Created from 61-8-402, -405, and 61-5-208
Section 17 Forfeiture p. 25	Created from 61-8-421
Sections 18 – Section 43 p. 25 - 73	Removing reference to Title 61 in other sections of the MT Code Annotated and replacing with reference to Sections in new DUI statute

Section 44 Repealer p. 73, 74	Repealing sections of code that have been recodified in the new DUI statute in Title 61.
Section 45 Codification Instruction p. 74	DUI statutes to be codified in Title 61, Chapter 8
Section 46 Saving Clause p. 75	Not to impact rights, duties, penalties or proceedings that began before the effective date.
Section 47 Effective Date p. 75	January 1, 2022.
Section 48 Applicability p. 75	Only applies to DUI incidents which occur on or after the effective date.

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Friday, March 19, 2021
SB 354 - Revise laws related to land servitudes and easements
Sponsor: **Sen. Steve Hinebauch (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info

No Visitors Registered into this Committee Meeting

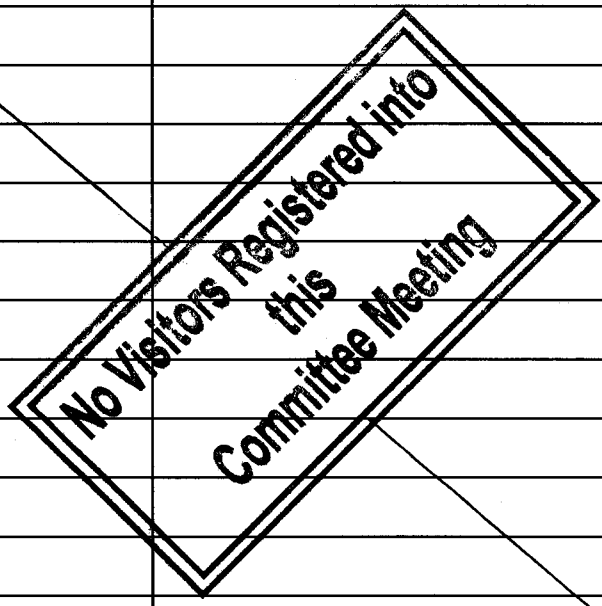
Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Friday, March 19, 2021
SJ 8 - Resolution supporting "Keep Nine Amendment" to US Constitution
Sponsor: **Sen. Keith Regier (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info



Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Friday, March 19, 2021
SB 365 - Generally revise and reorganize driving under the influence laws
Sponsor: **Sen. Keith Regier (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Nanette Gilbertson	MCAA & MSPOA	✓		

Visitors Registered into this Committee Meeting

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

	House Judiciary Zoom Testimony 03.19.2021				
Bill	**Name**	**Location**	**Email**	**Position**	**Affiliation**
SB-365	**Proponent**				
SB-365	Angela Wetzsteon	Hamilton, Montana	awetzsteon@rc.mt.gov	Proponent	Montana County Attorney Association

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
67th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chair Amy Regier, on April 14, 2021 at 8:00 AM, in Room 137 Capitol

ROLL CALL

Members Present:

Rep. Kathy Kelker, Vice Chair (D)
Rep. Amy Regier, Vice Chair (R)
Rep. Seth Berglee (R)
Rep. Laurie Bishop (D)
Rep. Jennifer Carlson (R)
Rep. Robert Farris-Olsen (D)
Rep. Frank Fleming (R)
Rep. Tom France (D)
Rep. Jane Gillette (R)
Rep. Donavon Hawk (D)
Rep. Jedediah Hinkle (R)
Rep. Dennis R. Lenz (R)
Rep. Brandon Ler (R)
Rep. Bob Phalen (R)
Rep. Ed Stafman (D)
Rep. Mallerie Stromswold (R)
Rep. Danny Tenenbaum (D)

Members Excused:

Rep. Barry Usher, Chair (R)
Rep. Derek Skees (R)

Members Absent: None

Staff Present:

Lydia Balian, Committee Secretary
Rachel Weiss, Legislative Branch
Hallie Swain, Remote Meeting Coordinator

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: SB 400, 4/9/2021; HJ 32, 4/9/2021; HJ 34, 4/9/2021
Executive Action on: SB 318; SB 344; SB 361; SB 353; SB 365; SB 370

08:02:11 Rep. Ler assumed the chair.

HEARING ON SB 400

Opening Statement by Sponsor:
08:02:48 Sen. Theresa Manzella (R), SD 44, opened the hearing on SB 400, Restrict governmental entity from interfering with parental rights.

Proponents' Testimony:
08:09:42 Raye Newmeyer, self
08:11:08 Rep. Skees joined the meeting.
08:11:27 Tina Norcutt, self
08:12:56 Garrett Bacon, self
08:13:34 Dave Kesler, self
EXHIBIT(juh71a01)

08:18:53 Keith Newmeyer, self
08:23:07 Debbie Westlake, self
08:30:46 Dale Jolly, self
08:34:11 Mike Hagman, self
08:39:05 Rep. Skees left the meeting.
08:39:48 Janee Webber, self
08:43:30 Robin Mohs, self
08:45:22 Denise Johnson, Montana Child Protection Alliance (MCPA)
08:46:02 Rep. Hawk left the meeting.
08:48:42 Terri Lackey, self
08:49:27 Lillie Rutledge, self
08:54:43 Alan Lackey, self
08:57:01 Lita Pepion, self

Opponents' Testimony:
08:58:14 Kelsen Young, Montana Coalition Against Domestic and Sexual Violence (MCADSV)
09:01:49 Emily Dean, Montana School Boards Association (MTSBA)
09:03:13 Robin Turner, self
09:07:29 Dr. Elizabeth Beil, self
09:09:59 Rep. Usher joined the meeting.
09:10:32 Gail Goheen, self
09:12:46 Rep. Skees rejoined the meeting.

Informational Testimony:
09:16:19 Adam Meyer, Department of Public Health and Human Services (DPHHS)

Questions from Committee Members and Responses:
09:17:13 Rep. Berglee
09:17:33 Adam Meyer, DPHHS
09:19:03 Rep. Carlson
09:21:33 Emily Dean, MTSBA
09:22:54 Rep. Carlson
09:25:41 Sen. Manzella

09:26:27 Rep. Carlson
09:27:58 Adam Meyer, DPHHS
09:28:30 Nick Domitrovich, Department of Public Health and Human Services (DPHHS)
09:31:52 Vice Chair Kelker
09:35:12 Gail Goheen, self
09:36:36 Rep. Carlson
09:37:28 Adam Meyer, DPHHS
09:37:43 Rep. Gillette
09:37:54 Rep. Usher
09:38:23 Rep. J. Hinkle
09:39:34 Sen. Manzella
09:41:16 Rep. Phalen
09:42:14 Sen. Manzella
09:44:00 Rep. Stafman
09:44:05 Rep. J. Hinkle left the meeting.
09:44:40 Rep. Usher
09:45:23 Rep. Stafman
09:45:26 Rep. Hawk rejoined the meeting. Rep. Lenz left the meeting.
09:48:37 Gail Goheen, self
09:49:15 Rep. Gillette
09:51:28 Sen. Manzella
09:53:13 Rep. Gillette
09:55:03 Gail Goheen, self
09:55:22 Vice Chair Kelker
09:56:02 Rachel Weiss, Legislative Services Division (LSD)
09:57:22 Rep. Skees
10:00:07 Gail Goheen, self
10:00:28 Rep. Carlson
10:01:39 Sen. Manzella
10:02:44 Rep. Phalen
10:03:12 Sen. Manzella

Closing by Sponsor:
10:04:47 Sen. Manzella
EXHIBIT(juh71a02)

10:09:03 Rep. Usher assumed the chair.

HEARING ON HJ 32

Opening Statement by Sponsor:
10:10:28 Rep. Ed Stafman (D), HD 62, opened the hearing on HJ 32, Study of discrimination in Montana's criminal justice system.

Proponents' Testimony:
10:17:20 Adrian Jawort, Montana Native Voice (MNV)
10:20:15 Amy Sings In The Timber, Montana Innocence Project (MTIP)
10:22:22 Kelsen Young, Montana Coalition Against Domestic and Sexual Violence (MCADSV)
10:23:27 Jasmine Krotkov, self

10:24:56 Laurie Little Dog, self
10:26:07 Myshell Lyday, Montana Association of Criminal Defense Lawyers (MTACDL)
10:27:48 Andy Werk Jr., Fort Belknap Indian Community
10:31:15 Kelly Twoteeth, self

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:
10:34:31 Rep. Skees
10:41:49 Rep. Stafman
10:42:57 Chair Usher
10:42:52 Rep. Stafman
10:43:55 Vice Chair Kelker
10:44:32 Chair Usher
10:45:11 Rep. Stafman

Closing by Sponsor:
10:45:52 Rep. Stafman

10:46:02 Vice Chair Regier assumed the chair.
10:50:18 Rep. Skees
10:51:16 Vice Chair Kelker
10:51:57 Rep. Hawk
10:52:11 Rep. J. Hinkle and Rep. Lenz rejoined the meeting.

HEARING ON HJ 34

Opening Statement by Sponsor:
10:53:25 Rep. Barry Usher (R), HD 40, opened the hearing on HJ 34, Study of pretrial and presentence diversion programs.

Proponents' Testimony:
10:54:54 Nanette Gilbertson, Montana Sheriffs and Peace Officers Association (MSPOA); Montana County Attorneys Association (MCAA)
10:57:51 Amy Sings In The Timber, Montana Innocence Project (MTIP)
10:58:54 Dan Brooks, Billings Chamber of Commerce
11:00:04 Kelsie Harwood, Montana County Attorneys Association (MCAA)

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:
11:02:06 Vice Chair Kelker
11:02:47 Rep. Usher

Closing by Sponsor:
11:05:57 Rep. Usher

11:07:35 Rep. Usher resumed the chair.
11:10:51 Rep. Phalen
11:11:24 Rep. Skees
11:11:37 Rep. Hawk

11:11:55 Recess
11:32:44 Reconvened with Rep. Phalen, Rep. Tenenbaum, and Rep. Skees excused.

EXECUTIVE ACTION ON SB 318

11:33:13 **Motion/Vote:** Rep. A. Regier moved to **RECONSIDER ACTION** on **SB 318**. Motion carried without objection.

11:33:44 **Motion:** Rep. A. Regier moved that **SB 318 BE CONCURRED IN**.

11:33:51 **Motion:** Rep. A. Regier moved that **SB 318 BE AMENDED**.
EXHIBIT(juh71a03)

Discussion:
11:34:03 Rachel Weiss, Legislative Services Division (LSD)
11:35:27 Rep. Kelker
11:36:04 Rachel Weiss, LSD
11:37:12 Rep. Stafman
11:38:14 Rachel Weiss, LSD

11:38:29 **Vote:** Motion carried 12-7 by roll call vote with Rep. Bishop, Rep. Farris-Olsen, Rep. France, Rep. Hawk, Rep. Kelker, Rep. Stafman and Rep. Tenenbaum voting no. Rep. Phalen, Rep. Skees and Rep. Tenenbaum voted by proxy.

11:39:27 **Motion/Vote:** Rep. A. Regier moved that **SB 318 BE CONCURRED IN AS AMENDED**. Motion carried 12-7 by roll call vote with Rep. Bishop, Rep. Farris-Olsen, Rep. France, Rep. Hawk, Rep. Kelker, Rep. Stafman and Rep. Tenenbaum voting no. Rep. Phalen, Rep. Skees and Rep. Tenenbaum voted by proxy. Rep. Ler will carry the bill.

EXECUTIVE ACTION ON SB 344

11:40:54 **Motion:** Rep. A. Regier moved that **SB 344 BE CONCURRED IN**.

Discussion:
11:41:01 Rachel Weiss, LSD
11:41:22 Chair Usher
11:41:38 Vice Chair Kelker
11:42:00 Rachel Weiss, LSD
11:43:44 Vice Chair Kelker
11:44:03 Rep. Bishop
11:45:19 Rep. Carlson
11:45:40 Vice Chair Kelker

11:47:00 Rep. Ler left the meeting.
11:46:13 Rep. Carlson

11:47:49 **Vote:** Motion carried 10-9 by roll call vote with Rep. Bishop, Rep. Carlson, Rep. Farris-Olsen, Rep. France, Rep. Hawk, Rep. J. Hinkle, Rep. Kelker, Rep. Stafman and Rep. Tenenbaum voting no. Rep. Ler, Rep. Phalen, Rep. Skees and Rep. Tenenbaum voted by proxy. Rep. Patelis will carry the bill.

EXECUTIVE ACTION ON SB 361

11:49:40 **Motion:** Rep. A. Regier moved that **SB 361 BE CONCURRED IN**.

Discussion:
11:50:32 Rep. France
11:54:56 Rep. J. Hinkle

11:55:11 **Motion:** Rep. France moved that **SB 361 BE AMENDED**.
EXHIBIT(juh71a04)

Discussion:
11:55:34 Rep. J. Hinkle
11:56:17 Rep. Berglee

11:56:52 **Vote:** Motion carried 10-9 by roll call vote with Rep. Berglee, Rep. Carlson, Rep. Fleming, Rep. Ler, Rep. Phalen, Rep. A. Regier, Rep. Skees, Rep. Stromswold and Rep. Usher voting no. Rep. Ler, Rep. Phalen, Rep. Skees and Rep. Tenenbaum voted by proxy.

11:57:44 **Motion:** Rep. A. Regier moved that **SB 361 BE CONCURRED IN AS AMENDED**.

Discussion:
11:58:09 Rep. Gillette
12:00:08 Rep. J. Hinkle
12:00:31 Rep. Skees rejoined the meeting.
12:01:03 Rep. France
12:01:57 Chair Usher

12:02:35 **Vote:** Motion carried 12-7 by roll call vote with Rep. Carlson, Rep. Gillette, Rep. Ler, Rep. Phalen, Rep. A. Regier, Rep. Skees and Rep. Usher voting no. Rep. Ler, Rep. Phalen and Rep. Tenenbaum voted by proxy. Rep. France will carry the bill.

EXECUTIVE ACTION ON SB 353

12:03:53 **Motion:** Rep. A. Regier moved that **SB 353 BE CONCURRED IN**.

Discussion:
12:04:06 Rachel Weiss, LSD
12:04:46 Rep. France, Rep. Hawk, and Rep. Fleming left the meeting.
12:06:13 Vice Chair Kelker

12:06:24 **Vote:** Motion failed 9-10 by roll call vote with Rep. Bishop, Rep. Carlson, Rep. Farris-Olsen, Rep. France, Rep. Hawk, Rep. Kelker, Rep. Stafman, Rep. Stromswold and Rep. Tenenbaum voting aye. Rep. Fleming, Rep. France, Rep. Hawk, Rep. Ler, Rep. Phalen and Rep. Tenenbaum voted by proxy.

12:07:34 **Motion/Vote:** Rep. A. Regier moved that **SB 353 BE TABLED**. Motion carried without objection.

EXECUTIVE ACTION ON SB 365

12:08:11 **Motion:** Rep. A. Regier moved that **SB 365 BE CONCURRED IN**.

Discussion:
12:08:18 Rachel Weiss, LSD

12:08:34 **Vote:** Motion carried unanimously by roll call vote. Rep. Fleming, Rep. France, Rep. Hawk, Rep. Ler, Rep. Phalen and Rep. Tenenbaum voted by proxy. Rep. Regier will carry the bill.

EXECUTIVE ACTION ON SB 370

12:09:49 **Motion:** Rep. A. Regier moved that **SB 370 BE CONCURRED IN**.

Discussion:
12:10:09 Rachel Weiss, LSD
12:10:27 Chair Usher

12:10:58 **Substitute Motion/Vote:** Rep. Kelker made a substitute motion that **SB 370 BE TABLED**. Substitute Motion failed 7-12 by roll call vote with Rep. Bishop, Rep. Farris-Olsen, Rep. France, Rep. Hawk, Rep. Kelker, Rep. Stafman and Rep. Tenenbaum voting aye. Rep. Fleming, Rep. France, Rep. Hawk, Rep. Ler, Rep. Phalen and Rep. Tenenbaum voted by proxy.

12:12:07 **Vote:** Motion carried 12-7 by roll call vote with Rep. Bishop, Rep. Farris-Olsen, Rep. France, Rep. Hawk, Rep. Kelker, Rep. Stafman and Rep. Tenenbaum voting no. Rep. Fleming, Rep. France, Rep. Hawk, Rep. Ler, Rep. Phalen and Rep. Tenenbaum voted by proxy. Rep. Ler will carry the bill.

EXECUTIVE ACTION ON SB 315

12:13:40 **Motion:** Rep. A. Regier moved that **SB 315 BE CONCURRED IN**.

Discussion:
12:13:56 Rachel Weiss, LSD

12:14:07 **Substitute Motion:** Rep. Skees made a substitute motion to **ADJOURN**.

Discussion:
12:14:32 Rep. Bishop

12:14:56 **Vote:** Motion carried 8-7 by roll call vote with Rep. Bishop, Rep. Farris-Olsen, Rep. France, Rep. Hawk, Rep. Kelker, Rep. Stafman and Rep. Tenenbaum voting no. Rep. France, Rep. Hawk and Rep. Tenenbaum voted by proxy.

ADJOURNMENT

Adjournment: 12:16:19

_____
Lydia Balian, Secretary

lb

Additional Documents:

EXHIBIT(juh71aad.pdf)

Montana State Legislature

2021 Session

Additional Documents

May include the following:

- **Business Report**
- **Roll Call -Attendance**
- **Standing Committee Reports**
- **Tabled Bills**
- **Fiscal Reports**
- **Roll Call Votes**
- **Informational Item's**
- **Witness Statements**
- **Visitor Register**
- **Any other type of documents such as:**

  Petitions, Pamphlets, Leaflets, Brochures, Emails, all documents given to Committee Secretary 24 hours after the meeting adjourned.

The original exhibit/items are on file at the Montana Historical Society and may be viewed there.

Montana Historical Society Archives, 225 N. Roberts, Helena, MT 59620-1201
Phone (406) 444-4774.
E-Document Specialist: Susie Hamilton SHamilton@mt.gov

BUSINESS REPORT

MONTANA HOUSE OF REPRESENTATIVES
67th LEGISLATURE - REGULAR SESSION

HOUSE JUDICIARY COMMITTEE

Date: Wednesday, April 14, 2021 **Time:** 8:00 AM
Place: Capitol **Room:** 137

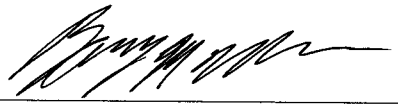
BILLS and RESOLUTIONS HEARD:

HJ 32 - Study of discrimination in Montana's criminal justice system - Rep. Ed Stafman (D)
HJ 34 - Study of pretrial and presentence diversion programs - Rep. Barry Usher (R)
SB 400 - Restrict governmental entity from interfering with parental rights - Sen. Theresa Manzella (R)

EXECUTIVE ACTION TAKEN:

SB 318 - Be Concurred In as Amended
SB 344 - Be Concurred In
SB 361 - Be Concurred In as Amended
SB 353 - Be Tabled
SB 365 - Be Concurred In
SB 370 - Be Concurred In

Comments:



REP. Barry Usher, Chair

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE: 4/14/21

NAME	PRESENT	ABSENT/EXCUSED
REP. USHER, CHAIR		✓
REP. AMY REGIER, VICE CHAIR	✓	
REP. KELKER, VICE CHAIR	✓	
REP. BERGLEE	✓	
REP. BISHOP	✓	
REP. CARLSON	✓	
REP. FARRIS-OLSEN	✓	
REP. FLEMING	✓	
REP. FRANCE	✓	
REP. GILLETTE	✓	
REP. HAWK	✓	
REP. JEDEDIAH HINKLE	✓	
REP. LENZ	✓	
REP. LER	✓	
REP. PHALEN	✓	
REP. SKEES		✓
REP. STAFMAN	✓	
REP. STROMSWOLD	✓	
REP. TENENBAUM	✓	

19 MEMBERS

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 318** (second house second reading copy -- tan) **be concurred in as amended.**

Signed: _____
Representative Barry Usher, Chair

To be carried by Representative Brandon Ler

And, that such amendments read:

Following: "SETTING;"
Insert: "REQUIRING A JUDICIAL OFFICER TO DISQUALIFY THE JUDICIAL OFFICER IN CERTAIN PROCEEDINGS; PROVIDING FOR ENFORCEMENT OF COMPLAINTS AGAINST JUDICIAL OFFICERS; PROVIDING RULEMAKING AUTHORITY;"

2. Title, line 6.
Following: "SECTIONS"
Insert: "2-2-136"

3. Title, line 6.
Following: "3-1-604"
Insert: ","

4. Page 1.
Following: line 10
Insert: "**Section 1.** Section 2-2-136, MCA, is amended to read:

"**2-2-136. Enforcement for state officers, legislators, and state employees -- referral of complaint involving county attorney.** (1) (a) A person alleging a violation of this part or [section 4] by a state officer, legislator, judicial officer, or state employee may file a complaint with the commissioner of political practices. The commissioner does not have jurisdiction for a complaint concerning a legislator if a legislative act is involved in the complaint. The commissioner also has jurisdiction over

Committee Vote:
Yes 12, No 7
Fiscal Note Required __

SB0318003SC19618.hlc

4.14.21 TR 12:59pm (11)

complaints against a county attorney that are referred by a local government review panel pursuant to 2-2-144 or filed by a person directly with the commissioner pursuant to 2-2-144(6). If a complaint is filed against the commissioner or another individual employed in the office of the commissioner, the complaint must be resolved in the manner provided for in 13-37-111(5).

(b) The commissioner may request additional information from the complainant or the person who is the subject of the complaint to make an initial determination of whether the complaint states a potential violation of this part.

(c) The commissioner may dismiss a complaint that is frivolous, does not state a potential violation of this part or [section 4], or does not contain sufficient allegations to enable the commissioner to determine whether the complaint states a potential violation of this part.

(d) When a complaint is filed, the commissioner may issue statements or respond to inquiries to confirm that a complaint has been filed, to identify against whom it has been filed, and to describe the procedural aspects and status of the case.

(2) (a) If the commissioner determines that the complaint states a potential violation of this part or [section 4], the commissioner shall hold an informal contested case hearing on the complaint as provided in Title 2, chapter 4, part 6. However, if the issues presented in a complaint have been addressed and decided in a prior decision and the commissioner determines that no additional factual development is necessary, the commissioner may issue a summary decision without holding an informal contested case hearing on the complaint.

(b) Except as provided in 2-3-203, an informal contested case proceeding must be open to the public. Except as provided in Title 2, chapter 6, part 10, documents submitted to the commissioner for the informal contested case proceeding are presumed to be public information.

(c) The commissioner shall issue a decision based on the record established before the commissioner. The decision issued after a hearing is

public information open to inspection.

(3) (a) Except as provided in subsection (3)(b), if the commissioner determines that a violation of this part or [section 4] has occurred, the commissioner may impose an administrative penalty of not less than $50 or more than $1,000.

(b) If the commissioner determines that a violation of 2-2-121(4)(b) has occurred, the commissioner may impose an administrative penalty of not less than $500 or more than $10,000.

(c) If the violation was committed by a state employee, the commissioner may also recommend that the employing state agency discipline the employee. The employing entity of a state employee may take disciplinary action against an employee for a violation of this part, regardless of whether the commissioner makes a recommendation for discipline.

(d) The commissioner may assess the costs of the proceeding against the person bringing the charges if the commissioner determines that a violation did not occur or against the officer or employee if the commissioner determines that a violation did occur.

(4) A party may seek judicial review of the commissioner's decision, as provided in Title 2, chapter 4, part 7, after a hearing, a dismissal, or a summary decision issued pursuant to this section.

(5) The commissioner may adopt rules to carry out the responsibilities and duties assigned by this part and [section 4]." "

Renumber: subsequent sections

5. Page 1.
Following: line 22
Insert: "NEW SECTION. **Section 4. Judicial conflict of interest -- recusal -- definition.** (1) A judicial officer shall disqualify the judicial officer in any proceeding in which the judicial officer's impartiality might reasonably be questioned, including but not limited to the following circumstances:

(a) the judicial officer has a personal bias or prejudice concerning a party or a party's lawyer or personal knowledge of facts that are in dispute in the proceeding;

(b) the judicial officer knows that the judicial officer, the judicial officer's spouse or domestic partner, a person within the third degree of relationship to either the judicial officer or the judicial officer's spouse or domestic partner, or the spouse or domestic partner of a person within the third degree of relationship to either judicial officer or the judicial officer's spouse or domestic partner is:

(i) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

(ii) acting as a lawyer in the proceeding;

(iii) a person who has more than a de minimus interest that could be substantially affected by the proceeding; or

(iv) likely to be a material witness in the proceeding;

(c) the judicial officer knows that the judicial officer, individually or as a fiduciary, or the judicial officer's spouse or domestic partner, parent, child, or any other member of the judicial officer's family residing in the same household has an economic interest in the subject matter in a controversy or in a party to the proceeding;

(d) the judicial officer, while a judicial officer or a judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy;

(e) the judicial officer:

(i) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during the association;

(ii) served in governmental employment and in that capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in that capacity an opinion concerning the merits of the particular matter in controversy;

(iii) was a material witness concerning the matter;

(iv) previously presiding as a judicial officer over the matter in another court; or

(v) has received a campaign contribution from a lawyer or party to the proceeding.

(f) a lawyer or party to the proceeding has made a contribution to a political committee or other entity that engaged in independent expenditures that supported the judicial officer or opposed the judicial officer's opponent in an election;

(2) A judicial officer shall keep informed about the judicial officer's personal and fiduciary economic interests and make a reasonable effort to keep informed about the personal economic interests of the judicial officer's spouse or domestic partner and minor children residing in the judicial officer's household.

(3) A judicial officer subject to disqualification under this section, other than for bias or prejudice, may disclose in writing or on the record the basis of the judicial officer's disqualification and may ask the parties and their lawyers to consider, outside the presence of the judicial officer and court personnel, whether to waive disqualification. If, following disclosure, the parties and lawyers agree, without participation by the judicial officer or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding.

(4) For the purposes of this section, "judicial officer" has the meaning provided in 1-1-202."

Insert: "NEW SECTION. **Section 5. Codification instruction.** [Section 4] is intended to be codified as an integral part of Title 2, chapter 2, and the provisions of Title 2, chapter 2, apply to [section 4]."

Insert: "NEW SECTION. **Section 6.** {standard} **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Renumber: subsequent section

- END -

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 344** (second house second reading copy -- tan) **be concurred in**.

Signed: _____
Representative Barry Usher, Chair

To be carried by Representative Jimmy Patelis

- END -

Committee Vote:
Yes 10, No 9
Fiscal Note Required __

SB0344001SC17707.hlc

4.14.21 TR 2:58pm

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 361** (second house second reading copy -- tan) **be concurred in as amended.**

Signed: _____
Representative Barry Usher, Chair

To be carried by Representative Tom France

And, that such amendments read:

1. Page 1, line 16.
Following: the first "a"
Insert: "felony"

2. Page 1, line 17.
Following: the third "a"
Insert: "felony"

3. Page 1, line 18.
Strike: "may"
Insert: "must"

4. Page 1, line 18 through line 19.
Strike: "or" on line 18 through "must" on line 19
Insert: "and"

5. Page 1, line 19 through line 20.
Strike: the second "county" on line 19 through "court" on line 20
Insert: "sentencing court's jurisdiction"

6. Page 1, line 23.
Following: "2]"
Insert: "and the petitioner has remained a law-abiding citizen"

7. Page 1.
Following: line 23
Insert: "(5) An individual may not request a certificate of rehabilitation while charged with or pending a felony offense, a misdemeanor offense with a possible penalty of up to 1 year in jail, or a revocation of a conditional discharge under 46-23-1020(2) or revocation of parole of a suspended sentence."

Committee Vote:
Yes 12, No 7
Fiscal Note Required __

SB0361001SC19692.hlc

4.15.21 10:39AM

8. Page 1, line 24.
Strike: "(5)"
Insert: "(6)"
Following: "shall"
Strike: "also"

9. Page 1, line 26.
Following: "rehabilitation"
Strike: "and is considered rehabilitated"

10. Page 2, line 7.
Following: "or"
Insert: "a minimum of"

11. Page 2, line 10 through line 13.
Following: "community" on line 10
Strike: "; and" on line 10 through "offense" on line 13

12. Page 2, line 21.
Strike: "the"
Insert: "a properly issued"

13. Page 2, line 22 through line 23.
Strike: "described" on line 22 through "In" on line 23
Insert: "with a possible penalty of up to 1 year in jail, in"

14. Page 2, line 25 through line 26.
Following: "rehabilitation." on line 25
Strike: remainder of line 25 through line 26 in their entirety

15. Page 3, line 4.
Following: "record"
Insert: "solely on account that the tenant has a criminal record"

16. Page 4, line 5.
Following: "character"
Insert: "for the purposes of vocational and professional licensing"

17. Page 5, line 7.
Following: the first "court"
Strike: "or the district court in the judicial district in which the person resides"

- END -

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 365** (second house second reading copy -- tan) **be concurred in**.

Signed: _____
Representative Barry Usher, Chair

To be carried by Representative Amy Regier

- END -

Committee Vote:
Yes 19, No 0
Fiscal Note Required __

SB0365001SC19669.hlc

4.14.21
TR 12:58pm

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 370** (second house second reading copy -- tan) **be concurred in**.

Signed: _____
Representative Barry Usher, Chair

To be carried by Representative Brandon Ler

- END -

Committee Vote:
Yes 12, No 7
Fiscal Note Required __

SB0370002SC19618.hlc

4.14.21 JR 1:10pm

COMMITTEE FILE COPY

BILL TABLED NOTICE

HOUSE JUDICIARY COMMITTEE

The **HOUSE JUDICIARY COMMITTEE** TABLED

SB 353 - Require probation /parole officers to inform re: restoration of rights - Sen. Jen Gross (D)

by motion, on **Wednesday, April 14, 2021** (PLEASE USE THIS ACTION DATE IN LAWS BILL STATUS).

Lydia Balian
(For the Committee)

(For the Chief Clerk of the House)

2:20pm / 4/14
(Time) (Date)

April 14, 2021 (2:16pm) Lydia Balian, Secretary Phone: 444-4872

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER SB 318 DATE 4/14/21

MOTION Do Pass Amendment SB318.2.1

NAME	AYE	NO	PROXY
REP. AMY REGIER, VICE CHAIR	✓		
REP. KELKER, VICE CHAIR		✓	
REP. CARLSON	✓		
REP. STROMSWOLD	✓		
REP. BERGLEE	✓		
REP. PHALEN	✓		✓
REP. FLEMING	✓		
REP. STAFMAN		✓	
REP. LENZ	✓		
REP. GILLETTE	✓		
REP. LER	✓		
REP. TENENBAUM		✓	✓
REP. BISHOP		✓	
REP. J. HINKLE	✓		
REP. HAWK		✓	
REP. SKEES	✓		✓
REP. FARRIS-OLSEN		✓	
REP. FRANCE		✓	
REP. USHER, CHAIR	✓		

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER SB 318 DATE 4/14/21

MOTION Be Concurred In as Amended

NAME	AYE	NO	PROXY
REP. AMY REGIER, VICE CHAIR	✓		
REP. KELKER, VICE CHAIR		✓	
REP. CARLSON	✓		
REP. STROMSWOLD	✓		
REP. BERGLEE	✓		
REP. PHALEN	✓		
REP. FLEMING	✓		
REP. STAFMAN		✓	
REP. LENZ	✓		
REP. GILLETTE	✓		
REP. LER	✓		
REP. TENENBAUM		✓	
REP. BISHOP		✓	
REP. J. HINKLE	✓		
REP. HAWK		✓	
REP. SKEES	✓		
REP. FARRIS-OLSEN		✓	
REP. FRANCE		✓	
REP. USHER, CHAIR	✓		

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER SB 344 DATE 4/14/21

MOTION Be Concurred In

NAME	AYE	NO	PROXY
REP. AMY REGIER, VICE CHAIR	✓		
REP. KELKER, VICE CHAIR		✓	
REP. CARLSON		✓	
REP. STROMSWOLD	✓		
REP. BERGLEE	✓		
REP. PHALEN	✓		✓
REP. FLEMING	✓		
REP. STAFMAN		✓	
REP. LENZ	✓		
REP. GILLETTE	✓		
REP. LER	✓		✓
REP. TENENBAUM		✓	✓
REP. BISHOP		✓	
REP. J. HINKLE		✓	
REP. HAWK		✓	
REP. SKEES	✓		✓
REP. FARRIS-OLSEN		✓	
REP. FRANCE		✓	
REP. USHER, CHAIR	✓		

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER SB 361 DATE 4/14/21

MOTION Do Pass Amendment SB361.1.2

NAME	AYE	NO	PROXY
REP. AMY REGIER, VICE CHAIR		✓	
REP. KELKER, VICE CHAIR	✓		
REP. CARLSON		✓	
REP. STROMSWOLD		✓	
REP. BERGLEE		✓	
REP. PHALEN		✓	✓
REP. FLEMING		✓	
REP. STAFMAN	✓		
REP. LENZ	✓		
REP. GILLETTE	✓		
REP. LER		✓	✓
REP. TENENBAUM	✓		✓
REP. BISHOP	✓		
REP. J. HINKLE	✓		
REP. HAWK	✓		
REP. SKEES		✓	✓
REP. FARRIS-OLSEN	✓		
REP. FRANCE	✓		
REP. USHER, CHAIR		✓	

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER SB 353 DATE 4/14/21

MOTION Be Concurred In

NAME	AYE	NO	PROXY
REP. AMY REGIER, VICE CHAIR		✓	
REP. KELKER, VICE CHAIR	✓		
REP. CARLSON	✓		
REP. STROMSWOLD	✓		
REP. BERGLEE		✓	
REP. PHALEN		✓	✓
REP. FLEMING		✓	✓
REP. STAFMAN	✓		
REP. LENZ		✓	
REP. GILLETTE		✓	
REP. LER		✓	✓
REP. TENENBAUM	✓		✓
REP. BISHOP	✓		
REP. J. HINKLE		✓	
REP. HAWK	✓		
REP. SKEES		✓	
REP. FARRIS-OLSEN	✓		
REP. FRANCE	✓		✓
REP. USHER, CHAIR		✓	

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER SB 361 DATE 4/20/21

MOTION Be Concurred In as Amended

NAME	AYE	NO	PROXY
REP. AMY REGIER, VICE CHAIR		✓	
REP. KELKER, VICE CHAIR	✓		
REP. CARLSON		✓	
REP. STROMSWOLD	✓		
REP. BERGLEE	✓		
REP. PHALEN		✓	✓
REP. FLEMING	✓		
REP. STAFMAN	✓		
REP. LENZ	✓		
REP. GILLETTE		✓	
REP. LER		✓	✓
REP. TENENBAUM	✓		✓
REP. BISHOP	✓		
REP. J. HINKLE	✓		
REP. HAWK	✓		
REP. SKEES		✓	
REP. FARRIS-OLSEN	✓		
REP. FRANCE	✓		
REP. USHER, CHAIR		✓	

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER SB 365 DATE 4/14/21

MOTION Be Concurred In

NAME	AYE	NO	PROXY
REP. AMY REGIER, VICE CHAIR	✓		
REP. KELKER, VICE CHAIR	✓		
REP. CARLSON	✓		
REP. STROMSWOLD	✓		
REP. BERGLEE	✓		
REP. PHALEN	✓		✓
REP. FLEMING	✓		✓
REP. STAFMAN	✓		
REP. LENZ	✓		
REP. GILLETTE	✓		
REP. LER	✓		✓
REP. TENENBAUM	✓		✓
REP. BISHOP	✓		
REP. J. HINKLE	✓		
REP. HAWK	✓		✓
REP. SKEES	✓		
REP. FARRIS-OLSEN	✓		
REP. FRANCE	✓		
REP. USHER, CHAIR	✓		

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER SB 370 DATE 4/14/21

MOTION Be Tabled

NAME	AYE	NO	PROXY
REP. AMY REGIER, VICE CHAIR		✓	
REP. KELKER, VICE CHAIR	✓		
REP. CARLSON		✓	
REP. STROMSWOLD		✓	
REP. BERGLEE		✓	
REP. PHALEN		✓	✓
REP. FLEMING		✓	✓
REP. STAFMAN	✓		
REP. LENZ		✓	
REP. GILLETTE		✓	
REP. LER		✓	✓
REP. TENENBAUM	✓		✓
REP. BISHOP	✓		
REP. J. HINKLE		✓	
REP. HAWK	✓		✓
REP. SKEES		✓	
REP. FARRIS-OLSEN	✓		
REP. FRANCE	✓		
REP. USHER, CHAIR		✓	

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER SB 370 DATE 4/14/21

MOTION Be Concurred In

NAME	AYE	NO	PROXY
REP. AMY REGIER, VICE CHAIR	✓		
REP. KELKER, VICE CHAIR		✓	
REP. CARLSON	✓		
REP. STROMSWOLD	✓		
REP. BERGLEE	✓		
REP. PHALEN	✓		✓
REP. FLEMING	✓		✓
REP. STAFMAN		✓	
REP. LENZ	✓		
REP. GILLETTE	✓		
REP. LER	✓		✓
REP. TENENBAUM		✓	✓
REP. BISHOP		✓	
REP. J. HINKLE	✓		
REP. HAWK		✓	✓
REP. SKEES	✓		
REP. FARRIS-OLSEN		✓	
REP. FRANCE		✓	
REP. USHER, CHAIR	✓		

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

BILL NUMBER N/A DATE 4/14/21

MOTION Adjourn Meeting

NAME	AYE	NO	PROXY
REP. AMY REGIER, VICE CHAIR	✓		
REP. KELKER, VICE CHAIR		✓	
REP. CARLSON	✓		
REP. STROMSWOLD	✓		
REP. BERGLEE	✓		
REP. PHALEN	—	—	
REP. FLEMING	—	—	
REP. STAFMAN		✓	
REP. LENZ	✓		
REP. GILLETTE	✓		
REP. LER	—	—	
REP. TENENBAUM		✓	✓
REP. BISHOP		✓	
REP. J. HINKLE	—	—	
REP. HAWK		✓	✓
REP. SKEES	✓		
REP. FARRIS-OLSEN		✓	
REP. FRANCE		✓	
REP. USHER, CHAIR	✓		

19 MEMBERS

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 67TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. Kathy Kelker.

PLEASE USE PEN

BILL	MOTION (Include AMENDMENT #)	AYE	NO
SB 361	Do Pass	✓	
SB 353	Do Pass	✓	
SB 365	Do Pass	✓	
SB 370			✓

BILL	MOTION (Include AMENDMENT #)	AYE	NO

I authorize my vote to be matched with that of Rep. Kathy Kelker for any amendments proposed on this date.

Rep. _____ Tom France 04/14/2021
(Signature) (Print Name) (Meeting Date)

Rep. France

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 67TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. Donovan Hawk to Kathy Kelker.

PLEASE USE PEN

BILL	MOTION (Include AMENDMENT #)	AYE	NO
SB 361	Do Pass	✓	
SB353.1.1	Do Pass ?		
SB353	Do Pass	✓	
SB365	Do Pass	✓	
SB370	Do Pass		✓

BILL	MOTION (Include AMENDMENT #)	AYE	NO

I authorize my vote to be matched with that of Rep. Kathy Kelker for any amendments proposed on this date.

Rep. _____ Donovan Hawk 04/14/2021

(Signature) (Print Name) (Meeting Date)

Rep. ~~France~~ Hawk

The Big Sky Country

Danny Tennebaum

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 67TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. Kathy Kelker.

PLEASE USE PEN

BILL	MOTION (Include AMENDMENT #)	AYE	NO
SB 318, 2, 1	Do Pass		✓
SB318	Do Pass		✓
SB 361, 1, 2	Do Pass	✓	
SB 361	DoPass	✓	
SB353 1, 1	Do Pass?		
SB353	Do Pass	✓	
SB365	Do Pass	✓	
SB370	Do Pass		✓

BILL	MOTION (Include AMENDMENT #)	AYE	NO

I authorize my vote to be matched with that of Rep. Kathy Kelker for any amendments proposed on this date.

Rep. _____ 04/14/2021

(Signature) (Print Name) (Meeting Date)

Rep. Tenenbaum

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 67TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. Sheer.

BILL	AYE	NO
Amendment SB318.2.1 Do Pass	✓	
SB318 as amended Do Concur	✓	
SB344 Do Concur	✓	
Amendment 361.1.2		✓
SB361 as amended Do Concur		✓
SB353 Do Concur		✓
SB365 Do Concur	✓	
SB370 Do Concur	✓	
sub. motion to table SB370		✓
~~SB315 Do Concur~~		
~~sub mot~~		

BILL	AYE	NO

I authorize my vote to be matched with that of Rep. A. Regier for any amendments proposed on this date.

Rep. Bob Phalen
(Signature)

Date 4/14/21

Rep. Phalen

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 67TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. A Reiger.

BILL	AYE	NO
SB355 Do Concur		✓
SB305 Do Concur	✓	
SB370 Do Concur	✓	
sub motion to table SB370		✓

BILL	AYE	NO

I authorize my vote to be matched with that of Rep. A Reiger for any amendments proposed on this date.

Rep. Jed Fleming
(Signature)

Date ~~1/6/2021~~ FF

Rep. Fleming

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 67TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. Regier.

BILL	AYE	NO
SB344 Do Concur	✓	
Amendment 361.1.2		✓
SB361 as amended Do Concur		✓
SB365 Do Concur		✓
SB365 Do Concur	✓	
SB370 Do Concur	✓	
sub motion to table SB370		✓

BILL	AYE	NO

I authorize my vote to be matched with that of Rep. A. Regier for any amendments proposed on this date.

Rep. Ler
(Signature)

Date 4/14/21

Rep. Ler

The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

AUTHORIZED COMMITTEE PROXY 67TH LEGISLATIVE SESSION

I request to be excused from the Judiciary Committee.

I desire to leave my proxy vote with Rep. Regier.

BILL	AYE	NO
Amendment SB318.2.1 DP Pass	✓	
SB 319 as amended DO Concur	✓	
SB 344 DO Concur	✓	
Amendment 361.1.2		✓
~~SB 361 as amended DO Concur~~		

BILL	AYE	NO

I authorize my vote to be matched with that of Rep. A. Regier for any amendments proposed on this date.

Rep. _____ (Signature) Date 4/14/21

Rep. Skees

Montana State Legislature

2021 Legislative Session

WITNESS STATEMENTS

The following is an assortment of documents that are witness statements.

"A witness statement is a signed document recording the evidence of a witness. A definition "a written statement signed by a person which contains the evidence which that person would be allowed to give orally."

Montana Historical Society Archives, 225 N. Roberts, Helena, MT 59620-1201
Phone (406) 444-4774.
E-Document Specialist Susie Hamilton

WITNESS STATEMENT

LEG Committee-House Judiciary testimony

From: leg-noreply@mt.gov
Sent: Monday, April 12, 2021 4:06 PM
To: LEG Applications Email Backup; LEG Committee-House Judiciary testimony
Subject: Public Comment for Bill HJ-32: Study of discrimination in Montana's criminal justice system 2021-04-14 08:00 AM - (H) Judiciary Successfully Submitted on 04-12-21 16:05

Details:
Bill: HJ-32: Study of discrimination in Montana's criminal justice system 2021-04-14 08:00 AM - (H) Judiciary
Position: Proponent
Representing an Entity/Another Person: No
Organization: N/A
Name: jasmine krotkov
Email: buffalogirlfarms@gmail.com
Phone: (406) 781-5699
City, State: Neihart, MT
Written Statement: I'm not speaking on behalf of anyone, but I am speaking as a Quaker- a part of the Religious Society of Friends

Quakers believe in the paramount need to protect and promote human rights, civil liberties and civil rights. Friends seek a society free from discrimination, whether due to race, creed, gender, ethnic or national heritage, age, sexual orientation, disability, medical condition, genetic background and gender identification or expression.

We uphold the separation of church and state. We defend guarantees for the free exercise of religion and oppose favoring particular religious beliefs or groups. Freedom from arbitrary or undue governmental intrusion and the equal treatment of all people by the state are inherent to a free society.
The people of the United States continue to live with the legacy of slavery and institutional racism. Here in Montana, Native Americans experience ongoing discrimination, and we must continue to seek reconciliation and remediation in many areas, including the criminal justice system.
While each person must examine unintended, unrecognized personal racism, our criminal justice system has a special responsibility to establish policies that acknowledge our history and create genuine equality of opportunity.
HJ 32 is an appropriate step toward finding out how discrimination is manifest in our criminal justice system.
Please vote for HJ32
Files:
Testify via Zoom: Yes
Zoom Method: Computer

WITNESS STATEMENT

LEG Committee-House Judiciary testimony

From: leg-noreply@mt.gov
Sent: Monday, April 12, 2021 8:24 PM
To: LEG Applications Email Backup; LEG Committee-House Judiciary testimony
Subject: Public Comment for Bill HJ-32: Study of discrimination in Montana's criminal justice system 2021-04-14 08:00 AM - (H) Judiciary Successfully Submitted on 04-12-21 20:23

Details:
Bill: HJ-32: Study of discrimination in Montana's criminal justice system 2021-04-14 08:00 AM - (H) Judiciary
Position: Proponent
Representing an Entity/Another Person: No
Organization: N/A
Name: Laurie Little Dog
Email: LaurieLittleDog@gmail.com
Phone: (406) 308-3378
City, State: Bozeman, MT
Written Statement: Please go green on HJ-32. This is a critically insightful study that will improve the Correctional situation in Montana. Thanks for supporting this study bill HJ-32.
Files:
Testify via Zoom: Yes
Zoom Method: Phone

WITNESS STATEMENT

LEG Committee-House Judiciary testimony

From: leg-noreply@mt.gov
Sent: Monday, April 12, 2021 1:12 PM
To: LEG Applications Email Backup; LEG Committee-House Judiciary testimony
Subject: Public Comment for Bill HJ-32: Study of discrimination in Montana's criminal justice system 2021-04-14 08:00 AM - (H) Judiciary Successfully Submitted on 04-12-21 13:12

Details:
Bill: HJ-32: Study of discrimination in Montana's criminal justice system 2021-04-14 08:00 AM - (H) Judiciary
Position: Proponent
Representing an Entity/Another Person: Yes
Organization: Warrior Women for Justice
Name: Lita J Pepion
Email: litapepion@hotmail.com
Phone: (406) 208-5779
City, State: Billings
Written Statement: Living in Montana my entire life and working with folks coming out of prison the racial disparities in the Montana Justus system are apparent. Please, at least study the issue - because those of us living that oppressive nonsense white men in suits call justice are getting our asses kicked out here. There are kidnapping our children, damaging them in their filthy, disgusting prisons and taking old folks retirement for "bail" that is never returned, fines, etc. I feel like I'm paying ransom for my child while those people call it justice. There are jokes all over about Natives receiving harsher sentences - they didn't fall out of the sky. We have ZERO Peers in that system - just upper middle class white people who make decisions about our lives based on poorly researched pre-sentence investigations, lies and bias. The people meting out justice in Montana are the ones who should be in cages - they are way dangerous with their sick power.
Files:
Testify via Zoom: Yes
Zoom Method: Computer

WITNESS STATEMENT

montana
HUMAN RIGHTS NETWORK

April 11, 2021

Dear Chair Usher and Members of the House Judiciary Committee:

The Montana Human Rights Network supports House Joint Resolution 32 on behalf of our 8,000 members and supporters across the state. When it comes to our criminal justice system, statistics make it clear that members of our BIPOC (Black, Indigenous, and People of Color) community are disproportionately represented in our prison system. For example, as HJ 32 notes, Indigenous people comprise somewhere between 8%-9% of Montana's population; however, 37% of incarcerated women in state prisons are Indigenous as are 20% of incarcerated men.

These numbers indicate there are underlying problems in our criminal justice system, and the "Whereas" sections of HJ 32 do a good job of listing many of the places along the way that could contribute to the racial disparities in these numbers. HJ 32 also points out that, while racial bias is widely viewed as intolerable, our criminal justice system only tends to address it when it appears in its most blatant and extreme forms.

It feels like the federal government, the State of Montana, and many nonprofits have done the first piece of research needed to address racial disparities. There is study after study showing how BIPOC communities are overrepresented in prisons. HJ 32 will take the next step, which is proposing ways to reduce or eliminate these racial disparities in the criminal justice system.

People currently have the ability to take action if they face discrimination based on race when it comes to employment, housing, education, and public accommodations to name a few. These protections come from the recognition that racism does still exist in our communities, and we want to try and get rid of it. HJ 32 will help extend this important idea to the criminal justice system. Please vote YES on HJ 32.

Travis McAdam
He/His/Him
Program Director:
Combating White Nationalism & Defending Democracy
Montana Human Rights Network
(406) 442-5506 ext. 11
travis@mhrn.org

WITNESS STATEMENT

LEG Committee-House Judiciary testimony

From: leg-noreply@mt.gov
Sent: Monday, April 12, 2021 2:11 PM
To: LEG Applications Email Backup; LEG Committee-House Judiciary testimony
Subject: Public Comment for Bill SB-400: Restrict governmental entity from interfering with parental rights 2021-04-14 08:00 AM - (H) Judiciary Successfully Submitted on 04-12-21 14:11

Details:
Bill: SB-400: Restrict governmental entity from interfering with parental rights 2021-04-14 08:00 AM - (H) Judiciary
Position: Proponent
Representing an Entity/Another Person: No
Organization: N/A
Name: Elke West
Email: elke.west@gmail.com
Phone: (406) 375-9243
City, State: Hamilton
Written Statement: My name is Elke West mother of two. I am standing for SB 400. It is a Constitutional right and a biblical command that parents have all responsibility to raise their own children to bring them up. That includes education. I am a former East German citizen and I came legally to this State to have a choice of homeschooling, choice of Healthcare, choice of Religion for my children to become responsible free citizen. Thank you.
Files:
Testify via Zoom: Yes
Zoom Method: Computer

WITNESS STATEMENT

LEG Committee-House Judiciary testimony

From: leg-noreply@mt.gov
Sent: Tuesday, April 13, 2021 7:30 AM
To: LEG Applications Email Backup; LEG Committee-House Judiciary testimony
Subject: Public Comment for Bill SB-400: Restrict governmental entity from interfering with parental rights 2021-04-14 08:00 AM - (H) Judiciary Successfully Submitted on 04-13-21 07:30

Details:
Bill: SB-400: Restrict governmental entity from interfering with parental rights 2021-04-14 08:00 AM - (H) Judiciary
Position: Proponent
Representing an Entity/Another Person: No
Organization: N/A
Name: Kelly Santiago
Email: santiagokellye@gmail.com
Phone: (512) 202-0885
City, State: BILLINGS, MT
Written Statement: Good morning Mr. Chair and Members of the Committee,

My name is Kelly Santiago. I am a board member of Montana Child Protection Alliance.
Several U.S. Supreme Court rulings recognize parents' constitutional rights to the care, custody, and control of their children. One ruling particularly relevant to this bill is Santosky vs Kramer, where the court explained that "[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State."

We have seen evidence of disturbing trends in Montana over the past decade in which parental rights are routinely violated. Currently the Ombudsman's Office caseload of CFSD complaints is almost five times the size of what it was in 2014. According to their most recent report, Concerns of inappropriate removal have nearly doubled in the past 4 years. Also very alarming are the dramatic increases in concerns about unprofessional conduct, visitations, and lack of response.

Current DPHHS code already specifies that the department is to offer services prior to removal and that reasonable efforts be made to keep children safely in their own homes (MCA 41-7-102 & MCA 41-3-101). Yet this continues to NOT happen on a routine basis, and CPS workers enjoy immunity from liability. We need additional measures of accountability to protect families from undue interference and trauma.

Several other states already have statutes that define and protect parental rights, including Idaho, Wyoming, Utah, Nevada, Colorado, Texas, Michigan, and several others.

Unnecessarily separating families destroys communities. DPHHS will continue to intervene in cases where children are truly abused or neglected. But this bill helps to ensure that the state can only intervene in a family where there is a legitimate and compelling need, and in those cases, to do so in the least intrusive way. Thank you for your time and I urge you to vote yes on this bill.
Files:
Testify via Zoom: Yes
Zoom Method: Phone

WITNESS STATEMENT

April 14, 2021

Chairman Usher and Members of the House Judiciary Committee:

The Montana Association of School Business Officials (MASBO), Montana School Boards Association (MTSBA), School Administrators of Montana (SAM), Montana Quality Education Coalition (MQEC), and Montana Rural Education Association (MREA) strongly support the right of parents to direct the upbringing of their children, but we oppose Senate Bill 400.

This bill would allow a cause of action against any party, including a school district, who a parent deems as interfering with their rights. This will, in turn, cause unnecessary expense for school districts and taxpayers in addressing these issues. This unintended consequence could be easily fixed by adding the following as a new (3) in Section 1 of the bill, immediately following a similar disclaimer as to the impact of this bill on Title 41, Chapter 3:

> "(3) This section may not be construed as invalidating or otherwise prohibiting the enforcement of the provisions of Title 20, chapter 5 relating to pupils or to relieve a parent or a pupil of the obligation to comply with provisions of Title 20."

This amendment was previously emailed to the sponsor and offered for SB 259, a nearly identical bill that failed to pass the Senate. With this amendment, we would not oppose SB 400. Without the amendment, however, SB 400 is harmful to schools and would severely disrupt district operations in facilitating student opportunities for learning. **We respectfully and strongly urge your opposition to SB 400.**

Montana Chapter

WITNESS STATEMENT

American Academy of Pediatrics
DEDICATED TO THE HEALTH OF ALL CHILDREN®

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Chapter Web site
www.mtpeds.org

March 31, 2021

Dear Senate Judiciary Committee:

The Montana Chapter of the American Academy of Pediatrics, representing 130 Montana pediatricians, urges you to vote NO on SB 400.

Adolescence is a period in development when young people learn gradually to make decisions and move towards independence. Some of these decisions and behaviors may have lifelong consequences for their health and safety. Confidentiality concerns can be a critical barrier for young patients in seeking and receiving appropriate medical services, and the protection of confidentiality, or the private nature of information provided during health care events, is a cornerstone of good adolescent health care. Confidentiality is also key to the Bright Futures guidelines that primary care pediatricians follow for adolescent preventive care and counseling.

This bill, in asserting a parent's absolute rights, removes adolescent confidentiality. It specifies that parents have absolute power to "direct the upbringing, education, health care, and mental health of their children". This would remove the ability of adolescents to confidentially seek health care and mental health care.

Adolescents who have been told that the details of their medical care will be kept private -- excepting those that must be reported such as suicidality, homicidal intent, or abusive situations – are more likely to ask questions about their health, and more likely to disclose concerns. They are also more likely to seek medical care.

The international human rights community recognizes confidentiality as a component of a youth's fundamental right to privacy. UNICEF's *Implementation Handbook for the Convention on the Rights of the Child* notes that "in order to promote the health and development of adolescents, States Parties are also encouraged to respect strictly their right to privacy and confidentiality, including with respect to advice and counselling on health matters."

Most young people do involve their parents in important decisions. Some don't disclose everything to parents only out of fear to burden them; they reach out to other adults for support for that reason. Sometimes they just need guidance in how to speak with their parents. Our role as pediatricians is often to encourage openness, and involve kids in parents in as many conversations together as we can.

Unfortunately, not every child can address sensitive issues with their parents safely. It is important that these children feel that they can trust the other adults in their lives and seek the help and support they need.

There are just so many scenarios for which this bill would put teenagers at risk. Consider a teen with risky behaviors whose parent abuses alcohol; if a therapy note were disclosed to the parent, this would put the child at risk for abuse. For teenagers with questions about a relationship a parent disapproves of, perhaps being pressured in an unsafe way – would it be better for them to speak to an adult who can reinforce safety, if they feel they can't ask a parent? Additionally, this bill would have particularly devastating impacts for LGTBQ+

youth who may seek counseling or other services related to their gender and/or sexuality, and face being potentially outed to their parents or guardians.

We have a shared concern: We all want our children to be safe and able to access the information and care they need. To do so, it's important that young people be able to speak truthfully to their doctors and counselors. This bill would undermine the trust between providers and patients. Teenagers would go without needed care.

Montana has led the nation or been in the top 3 states for suicide rates ever since statistics started to be kept. Worsening mental health access and safety will not help.

We are not making Montana's young people safer by denying them access to confidential medical care. On the contrary, this bill would put the most vulnerable young people in this state at risk, and keep them from accessing necessary counseling, information, and treatment that they need. Montana's pediatricians urge you to oppose this bill.

Thank you,

Dr. John Cole,
President

Dr. Lauren Wilson,
Vice President

WITNESS STATEMENT

LEG Committee-House Judiciary testimony

From: leg-noreply@mt.gov
Sent: Tuesday, April 13, 2021 9:29 AM
To: LEG Applications Email Backup; LEG Committee-House Judiciary testimony
Subject: Public Comment for Bill SB-400: Restrict governmental entity from interfering with parental rights 2021-04-14 08:00 AM - (H) Judiciary Successfully Submitted on 04-13-21 09:28

Details:
Bill: SB-400: Restrict governmental entity from interfering with parental rights 2021-04-14 08:00 AM - (H) Judiciary
Position: Opponent
Representing an Entity/Another Person: No
Organization: N/A
Name: Robin M Turner
Email: robin@rieslawgrouppc.com
Phone: (406) 541-4141
City, State: Missoula
Written Statement: I rise in opposition to SB 400.

The bill appears to create a cause of action against courts when they make private parenting determinations with which one (or both) parties do not agree. I cannot imagine how the bill has no fiscal note, given the thousands of family law determinations that courts undertake each year.

Under this bill, there would be a cause of action against the state and local courts for the following determinations: orders of protection, emancipation actions, parenting plans (including provisions for custody, medical decision making, educational decision making, and more), criminal no contact orders, etc. We would all prefer that people could resolve their conflicts or concerns about their children's best interests without going to court. However, the court system is there to resolve outstanding issues and to provide a neutral determination that is best for the children. SB 400 undermines this intent. Please vote 'no' on SB 240.
Files:
Testify via Zoom: Yes
Zoom Method: Computer

WITNESS STATEMENT

Oppose SB 400

Mr. Chairman, Members of the Committee

Thank you so much for the opportunity to testify here today. I'm Mars Scott. My last name is spelled SCOTT. I've practiced family law in Montana for over 40 years. I'm testifying today in my capacity as an attorney in private practice. I oppose this bill.

I oppose this bill because the language is confusing, and because the language is confusing there is no doubt that if this bill were to become law, it could be considered "a lawyer's relief act" because there would be an immense amount of litigation over the meaning of the words in the law. For example, in section 1, sub-1, it states that a governmental entity may not interfere with the fundamental right of parents to direct the upbringing, education, health care, and mental health of their children. So stop right there.

First, there is no legal definition of children. Probably everyone in the room is assuming it means little kids in grade school, and it could, but that's not necessarily accurate. The way this bill is written, the term "children" could also mean adult children, in other words, children over the age of 18, so parents with adult children could bring lawsuits under this bill if this were to become law. And what if the adults disagree on the relief requested? Who would decide how the litigation proceeds? The courts would decide.

And there is no definition of parents, and probably everyone is thinking natural parents. But Montana law also recognizes other legal parenting relationships including third parties who have demonstrated a child/parent relationship with a child, when the natural parent has engaged in conduct that is contrary to that child/parent relationship. You have situations where stepparents have taken on the fundamental role of parenting when the natural parent decides to step away from that role. You will find this relationship codified in our laws at section 40-4-228, which has been the law since 1999 and that law has worked well when the right facts are present. SB 400 allows no provision for this type of relationship, not to mention that the bill would also allow **either** parent to file a lawsuit, but what if the other parent were to disagree on bringing the action? Who gets to finally decide? Well, it would be the courts after a lengthy court battle. And what about a parent who has been absent for almost the entirety of a child's life and decides suddenly to step back into the child's life and start making decisions that are contrary to the children's best interests? There is nothing stopping a bad parent from suing the government if the government were to try to protect the child's rights, and as has been discussed in prior hearings, children in Montana have Constitutional rights so where the bill addresses the fundamental right of parents, it makes no mention of the interplay with the fundamental Constitutional rights of children. Again, great fodder for attorneys who want to litigate, and I submit that the litigation would be endless and expensive.

This is not a good bill for Montanans as written and I urge you to vote against it. Thank you.

WITNESS STATEMENT

LEG Committee-House Judiciary testimony

From: leg-noreply@mt.gov
Sent: Tuesday, April 13, 2021 9:15 AM
To: LEG Applications Email Backup; LEG Committee-House Judiciary testimony
Subject: Public Comment for Bill SB-400: Restrict governmental entity from interfering with parental rights 2021-04-14 08:00 AM - (H) Judiciary Successfully Submitted on 04-13-21 09:14

Details:
Bill: SB-400: Restrict governmental entity from interfering with parental rights 2021-04-14 08:00 AM - (H) Judiciary
Position: Opponent
Representing an Entity/Another Person: No
Organization: N/A
Name: Ryan Alane Phelan
Email: ryanalane@gmail.com
Phone: (406) 360-9359
City, State: Missoula
Written Statement: This bill does not resolve the issue identified by the proponents. Specifically, it excludes government action taken under Title 41, Chapter 3. That is the Chapter dealing with child abuse and neglect cases. While I understand the concern of parents who have had their children removed from their homes, as was the testimony in prior hearings, this bill does not address those issues in any way. This bill will not effect the removal of children by DPHHS, as those actions are specifically excluded from the bill.

To the contrary, this bill does increase the cost to Montana tax payers. In reviewing the fiscal note, it is clear that it was difficult to determine the cost of this bill, because there are so few cases known to the State of Montana which would fall under this bill. However, any time the state is required to pay attorney fees for a litigant, the cost is significant. I am concerned that this could be an expensive bill, in return for no real benefit to Montanans or their children.

I do not see the need for this bill; it does not resolve any identified concern of which I am aware. The fiscal note's review of case outcomes over the last year is misplaced - those cases (DPHHS cases) would be excluded from his bill. Even if they were not, the statistics are striking - the vast majority of DPHHS cases are decided in favor of the Department, and there are no reports of misconduct by DPHHS in the listed statistics or case outcomes. Regardless, as stated, this bill does not address DPHHS cases. Parents already have a constitutional right to parent, and that right is protected under current law. This bill adds nothing to that right.

The final objection I have to this bill is the increase in filing fees required by the bill. Those fees would apply to all cases filed in Montana. Already, people have difficulty accessing the Court system because of filing fees. While the indigent can request waiver of fees, many people struggle with the fees required to be paid. Increasing those fees will only serve to hurt Montana's, particularly those hardworking people who are not indigent, but to whom $20 can be a lot of money. There is no real benefit to Montanans if we pass this bill, but there is a significant detriment to them if we increase the filing fees for all civil cases filed in Montana.
Files:
Testify via Zoom: No
Zoom Method: N/A

WITNESS STATEMENT

Testimony SB 400

Before House Judiciary Committee

April 14, 2021

By Gail H. Goheen (Opponent)

Thank you Chairman and Judiciary Committee members, for allowing me to appear before you. My name is Gail Goheen (G-O-H-E-E-N), and I am here today in my individual capacity. I have been an attorney in Hamilton, Montana for over 40 years. During most of that time I have primarily specialized in the practice of family law, representing a wide range of clients in several jurisdictions of this state. In that context, I have certainly been engaged in many matters involving parents and children--often entailing "governmental entities.

While no doubt this Bill is well intentioned, that does not mean it is workable. I am testifying here today out of deep concern about the potential impact of SB 400 on affected parties—especially children, as well as the confusion, conflict, litigation, and expense that would undoubtedly ensue if it was enacted into law. Let me explain some of my key concerns.

- SB 400 purportedly prevents a governmental entity from interfering with the "fundamental right" of parents to direct matters relating to their children when it comes to their "upbringing, education, health care, and mental health." There is a general exception in SB 400 for situations when there is a compelling governmental interest (which I will later address), but ironically, the only specifically listed exception (under this Bill or its predecessor) concerns matters relating to invalidation of the laws under Title 41, Chapter 3 of the Montana Code, which deals with the State's involvement in abuse and neglect matters. (These very issues are at the heart of the arguments from most of the proponents). In other words, SB 400, doesn't solve such complaints.

- By specific reference under the Bill, "governmental entity" is defined in 2-9-101 MCA, as meaning "the state and political subdivisions. "State" in the same statute is defined as "the state of Montana or any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality of the state." Obviously that is very broad and would cover any State entity.

- "Children" are not defined in the statute. Is an emancipated child subject to their parent's wishes ? A child who is over the age of 18, etc.? There is no clarity in this Bill. "Parents" are not defined either. What about a parent who has never been involved in raising or supporting a child (especially, say for example, if the other parent has died, and someone else has been raising the child?) Should such a "parent" have supreme rights regarding the child? Are "parents" only natural parents or are do they include stepparents or other persons whom the Montana Supreme Court has allowed to assume parental rights (such as a grandparent or even a same sex partner), pursuant to 40-4-228 MCA.

- What happens when parents disagree about a child's upbringing, education, health care, and mental health issues? This is a huge potential problem in trying to interpret and apply the requirements of this Bill, given that parents may certainly have differences of opinion (especially in cases where they are separated or divorced).

- What about the rights of a child under Montana's Constitution? Art II, Section 15 says the rights of persons under 18 years of age, include all the fundamental constitutional rights given an adult, "unless specifically precluded by laws which enhance the protection of such persons." Those rights would include the inalienable rights granted under Article II, Section 3—including rights seeking safety, health, and happiness. Can we reasonably assume that parents (and only parents) will always be "protecting" their children just by virtue of what is ascribed them in SB 400? What happens when parental rights and children's rights clash? The legislature in 40-4-227 MCA, has clarified that when it comes to matters of children's well-being and balancing parents and children's constitutional rights, parental rights are subservient.

- SB 400 permits governmental interference with "parents' rights" when the governmental entity demonstrates that the interference furthers a "compelling governmental interest" which is "narrowly tailored and is the least restrictive means available for the furthering of the compelling governmental interest." So, what happens when a parent thinks the government shouldn't be telling them:
    - whether courts can say if their children should be subject to counseling or mental health evaluations;
    - what parents can or can't do despite a court ordered parenting plan in a divorce;
    - that juvenile justice authorities have superior rights in the "upbringing" of their children;
    - whether the government has the right to say that their children between the ages of 7 ad 16 (or 8th grade) should be required to attend public or private school or be subject to home schooling, as is currently the law under Sections 20-5-102, 103 and 111 MCA?

  I submit it is highly likely that in most of such cases that a "governmental entity" would be viewed as protecting children's constitutional rights and that the same would be deemed as meeting the "compelling governmental interest" exception. Regardless, no doubt, if this Bill is passed, these issues and undoubtedly many others will eventually be the subject of time consuming and expensive litigation in the courts.

- Under SB 400, if parents are successful, they would be entitled to reasonable attorney fees and costs from the governmental entity. However, with the governmental "compelling interest" factor in this statute (as I mentioned), in my opinion, parents will lose most of the types of battles I just referenced, but at considerable expense to them and the State. Also, remember, that complaints invalidating statutory authority under

the abuse and neglect statutes are excluded under this Bill—so those remedies if sought by parents, would also seem unlikely. Furthermore even if there wasn't such an exclusion in the Bill, despite some of the sad and challenging stories presented by proponents of this bill relating to children being removed from homes, from experience I can guarantee you that there are always two sides to any story presented in court, and claimants would probably face an uphill battle. So what happens if parents lose cases on these issues? Not only will they be out their attorney fees, but the cost to the State, agencies, and related entities (in the form of expenses relating to representation) could also be considerable. I submit that the minimal filing fees added to SB 400 wouldn't constitute a drop in the bucket in meeting those expenses. And that doesn't even count the time taken from the courts in being able to deal with other matters of importance.

The problems referenced relating to this Bill are real, and no doubt will be raised by various Montana parents at some time if this Bill is enacted. The resulting legal morass and expense is not something that this State needs. This Bill should be defeated; I request you vote against it.

WITNESS STATEMENT

LEG Committee-House Judiciary testimony

From: leg-noreply@mt.gov
Sent: Tuesday, April 13, 2021 11:46 AM
To: LEG Applications Email Backup; LEG Committee-House Judiciary testimony
Subject: Public Comment for Bill SB-400: Restrict governmental entity from interfering with parental rights 2021-04-14 08:00 AM - (H) Judiciary Successfully Submitted on 04-13-21 11:45

Details:
Bill: SB-400: Restrict governmental entity from interfering with parental rights 2021-04-14 08:00 AM - (H) Judiciary
Position: Informational Witness
Representing an Entity/Another Person: No
Organization: N/A
Name: Lillie Rutledge
Email: Sassyscoutmom@gmail.com
Phone: (406) 564-3929
City, State: Great Falls MT
Written Statement: I lost custody of my children with only the word of my mother-in-law who openly admits she hates me. Cps tols me they believe jer because I am Native American and I had to be an alcoholic because of that. Despite my continued progress and unending cooperation cps faults reports say I am in noncompliance. Cps has refused to turn in refurals and still have not started family counseling despite the fact they have kept the case open for almost a year. I have been told I could have unsupervised visits then have cps tell me I have no hope of getting my children back because it was up to the cps on the end as they make all the decisions. From the beginning they told me if they kept my children in foster care long enough the state would take them regardless of what I did. I have done nothing wrong and have jumped through every hoop just to have them drag everything out so I loose my children in the end.
Files:
Testify via Zoom: Yes
Zoom Method: Phone

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Wednesday, April 14, 2021
HJ 32 - Study of discrimination in Montana's criminal justice system
Sponsor: **Rep. Ed Stafman (D)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Sam Forstag	ACLU of Montana	✓		
Adrian Jawort	Montana Native Vote	✓		
SK Rossi	Innocence Project	X		
Debbie Westphal	Self	X		
Kelli Twoteeth	Self	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Wednesday, April 14, 2021
HJ 34 - Study of pretrial and presentence diversion programs
Sponsor: **Rep. Barry Usher (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Sk Rossi	Innocence Project	X		
Nanette Gilbertson	MCAA & MSPOA	√		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Wednesday, April 14, 2021
SB 400 - Restrict governmental entity from interfering with parental rights
Sponsor: **Sen. Theresa Manzella (R)**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Garett Bacon	Self	X		
Dave Keyler III	self	X		
[illegible]	self	X		
Raye Newmeyer	self	X		
Keith Newmeyer	Former Foster Parent Adopt	X		
Robyn Mohs	self	X		
Debbie Westlake	self	X		
Kayla Trumble	self	X		
Adam Meier	DPHHS		[redacted]	X

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

House Judiciary Zoom Testimony 04.14.2021

Bill	Name	Location	Email	Position	Affiliation
SB-400	**Proponents**				
SB-400	Kelly Santiago	Billings, Montana	santiagokellye@gmail.com	Proponent	
SB-400	Elke West	Hamilton, Montana	elke.west@gmail.com	Proponent	
SB-400	Alan Lackey	Stevensville, Montana	alankl@protonmail.com	Proponent	
SB-400	Teri Lackey	Stevensville, Montana	tlakcey0505@protonmail.com	Proponent	
SB-400	Catherine McWilliam	Hamilton, Montana	chaynkt@gmail.com	Proponent	
SB-400	Denise Johnson	Billings, Montana	denisejohnson1961@gmail.com	Proponent	Child Protection Alliance
SB-400	**Opponents**				
SB-400	Elizabeth Beil	Missoula, Montana	lemiller1018@gmail.com	Opponent	MT Chapter-American Academy of Pediatrics
SB-400	Kylee Bodley	Billings, Montana	kbodleymtaap@gmail.com	Opponent	
SB-400	Emily Dean	Helena, Montana	edean@mtsba.org	Opponent	MASBO, MTSBA, SAM, MQEC, MREA
SB-400	Debra Silk	Helena, Montana	dsilk@mstba.org	Opponent	
SB-400	Lance Melton	Helena, Montana	lmelton@mtsba.org	Opponent	
SB-400	Robin Turner	Missoula, Montana	robin@riselawgrouppc.com	Opponent	
SB-400	Gail Goheen	Corvallis, Montana	gail@goheenlaw.com	Opponent	
SB-400	Kelsen Young	Helena, Montana	kyoung@mcadsv.com	Opponent	MT Coalition Against Domestic and Sexual Violence
SB-400	**Informational Witness**				
SB-400	Lillie Rutledge	Great Falls, Montana	sassyscoutmom@gmail.com	Informational Witness	
SB-400	Nicholas Domitrovich	Helena, Montana	ndomitrovich@mt.gov	Informational Witness	
HJ-32	**Proponents**				
HJ-32	President Andrew Werk	Hays, Montana	andy.werk@ftbelknap.org	Proponent	Fort Belknap Indian Community Tribal Council
HJ-32	Myshell Lyday	Missoula, Montana	myshell@montanalaw.com	Proponent	Montana Association of Criminal Defense Lawyers
HJ-32	Amy Sings In The Timber	Missoula, Montana	amy@mtinnocenceproject.org	Proponent	Montana Innocence Project
HJ-32	Laurie Little Dog	Bozeman, Montana	laurielittledog@gmail.com	Proponent	
HJ-32	Jasmine Krotkov	Neihart, Montana	buffalogirlfarms@gmail.com	Proponent	
HJ-32	Lita Pepion	Billings, Montana	litapepion@hotmail.com	Proponent	
HJ-32	Kelsen Young	Helena, Montana	kyoung@mcadsv.com	Proponent	MT Coalition Against Domestic and Sexual Violence
HJ-32	Travis McAdam	Helena, Montana	travis@mhrn.orb	Proponent	
HJ-34	**Proponents**				
HJ-34	Daniel Brooks	Billings, Montana	daniel@billingschamber.com	Proponent	
HJ-34	Amy Sings In The Timber	Missoula, Montana	amy@mtinnocenceproject.org	Proponent	MT Innocence Project

HJ-34	Kelsen Young	Helena, Montana	kyoung@mcadsv.com	Proponent	MT Coalition Against Domestic and Sexual Violence
HJ-34	Kelsie Harwood	Chinook, Montana	kharwood@blaincounty-mt.gov	Proponent	MT County Attorneys Association